

## NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

### NOTICE OF FINAL EXEMPT RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 29. OFFICE OF PEST MANAGEMENT

*Editor's Note: The following Notice of Final Exempt Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3042.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 17, 2013.*

[R13-159]

#### PREAMBLE

<u>1. Articles, Parts, or Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
R4-29-101	Amend
R4-29-102	Amend
R4-29-103	Repeal
R4-29-103	Renumber
R4-29-103	Amend
R4-29-104	Repeal
R4-29-104	New Section
R4-29-105	Renumber
R4-29-106	Renumber
R4-29-107	Amend
Table 1	Amend
Article 2	Amend
R4-29-201	Amend
R4-29-202	Repeal
R4-29-202	Renumber
R4-29-202	Amend
R4-29-203	Amend
R4-29-204	Amend
R4-29-205	Renumber
R4-29-205	New Section
R4-29-206	Renumber
R4-29-206	Amend
R4-29-207	Repeal
R4-29-207	New Section
R4-29-208	Repeal
R4-29-208	New Section
R4-29-209	Renumber
R4-29-209	Amend
R4-29-210	Repeal
R4-29-210	Renumber
R4-29-210	Amend
R4-29-211	Repeal
R4-29-211	Renumber
R4-29-211	Amend
R4-29-212	Renumber
R4-29-212	New Section
R4-29-213	Renumber
R4-29-213	New Section
R4-29-214	Renumber
R4-29-215	Amend

**Notices of Exempt Rulemaking**

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R4-29-216	Amend
Article 3	Amend
R4-29-301	Renumber
R4-29-301	Amend
R4-29-302	Renumber
R4-29-302	Amend
R4-29-303	Renumber
R4-29-303	Amend
R4-29-304	Renumber
R4-29-304	New Section
R4-29-305	Renumber
R4-29-305	Amend
R4-29-306	Renumber
R4-29-306	Amend
R4-29-307	Renumber
R4-29-307	Amend
R4-29-308	Renumber
R4-29-308	Amend
R4-29-309	Renumber
R4-29-309	Amend
R4-29-310	Renumber
R4-29-310	Amend
Article 4	New Article
R4-29-401	Renumber
R4-29-401	Amend
R4-29-402	Renumber
R4-29-402	Amend
R4-29-403	Renumber
R4-29-403	Amend
R4-29-404	New Section
R4-29-405	Renumber
R4-29-405	Amend
R4-29-406	New Section
R4-29-407	Renumber
R4-29-407	Amend
Article 5	Amend
R4-29-501	Repeal
R4-29-501	Renumber
R4-29-501	Amend
R4-29-502	Renumber
R4-29-502	Amend
R4-29-503	Renumber
R4-29-503	Amend
R4-29-504	Renumber
R4-29-504	New Section
R4-29-505	Renumber
R4-29-505	New Section
Article 6	Repeal
Article 6	Renumber
Article 6	Amend
R4-29-601	Repeal
R4-29-601	New Section
R4-29-602	Renumber
R4-29-602	Amend
R4-29-603	Renumber
R4-29-603	New Section
R4-29-604	Repeal
R4-29-604	Renumber
R4-29-604	Amend
R4-29-605	Renumber
R4-29-605	Amend
R4-29-606	Renumber
R4-29-606	New Section
R4-29-607	Renumber
R4-29-608	Renumber

Notices of Exempt Rulemaking

R4-29-609	Renumber
Article 7	Renumber
R4-29-701	Repeal
R4-29-702	Repeal
R4-29-703	Repeal
R4-29-704	Renumber
R4-29-705	Repeal
R4-29-706	Repeal
R4-29-707	Repeal
R4-29-708	Renumber

**2. Citations to the agency's statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific), and the statute or session law authorizing the exemption:**

Authorizing statute(s): A.R.S. §§ 32-2301(3), 32-2304(A)(1), (9), (10), 32-2304(B)(18), 32-2306, 32-2312(B), 32-2317, 32-2321(C)(14), 32-2324(A), 32-2325(B)(14) and 32-2331(B).

Implementing statute(s): A.R.S. §§ 32-2301(3), 32-2304(A)(1), (9), (10), 32-2304(B)(18), 32-2306, 32-2312(B), 32-2317, 32-2321(C)(14), 32-2324(A), 32-2325(B)(14) and 32-2331(B).

Statute or session law authorizing the exemption: Laws 2013, Ch. 125, § 37.

**3. The effective date of the rules and the agency's reason it selected the effective date:**

September 13, 2013

These rules are effective September 13, 2013, the same day Laws 2013, Ch. 125 goes into effect. Laws 2013, Ch. 125 makes substantial revisions to the Office of Pest Management's statutes, and this rulemaking brings the Office of Pest Management's rules in line with the revised statutes. The Office of Pest Management has chosen to make this rulemaking effective on the same date that the statutory changes become effective so that there is no confusion with trying to apply old rules to new statutes.

**4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**

None

**5. The agency's contact person who can answer questions about the rulemaking:**

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Address: 1688 W. Adams  
Phoenix, AZ 85007  
Telephone: (602) 542-3575  
E-mail: jpeterson@azda.gov

**6. An agency's justification and reason why rules should be made, amended, repealed or renumbered to include an explanation about the rulemaking:**

Laws 2011, Ch. 20, § 6 required the Director of the Arizona Department of Agriculture (ADA) to appoint a nine member task force to study the regulation of structural pest management in Arizona, specifically as it related to the following four items: (1) a review of all laws and regulations governing structural pest management in this state, (2) a review of possible organizational configurations within ADA for structural pest management regulation, (3) a review of personnel and funding issues relating to the administration of structural pest management regulation within ADA and (4) statutory changes necessary to accomplish the future structural pest management program. Between August 2011 and October 2012, the Task Force and its subcommittees held over eighteen public meetings to review the laws and regulations governing structural pest management and to develop proposed statutes and rules. The Task Force developed the proposed statutes and rules on parallel paths to help ensure appropriate regulatory oversight. The proposed Office of Pest Management (OPM) statutes covered general authorities, similar to ADA's statutes. The corresponding rules provided detail and clarity to the proposed statutory provisions.

As the Task Force reviewed the existing statutes and rules, it particularly focused on developing a fair regulatory package that would be less burdensome on the regulated industry while continuing to provide protections for the public. The following examples of Task Force recommendations demonstrate that balance:

- Reduce the education requirement to become a Qualifying Party (QP) from the confusing and burdensome 3,000 verifiable hours to simply two years of applicator licensure, which is a common requirement in other states.
- Allow some QP licensees to broaden their license into other QP categories upon passing the required test without needing to satisfy the experience requirement.
- Reduce the TARF fee from \$8 to \$2 per report and reduce the information required on the TARF and when it needs to be reported.

Notices of Exempt Rulemaking

- Eliminate mandatory government background checks for licensees; the regulated business will be responsible for their own employee screening. This reduces the backlog of state background checks and allows OPM to process applicator licenses more quickly and efficiently.

The Task Force's recommended revisions of OPM's statutes and rules changed OPM's entire funding structure. Prior to Laws 2013, ch. 125, OPM received a large portion of its funding through TARP fees. That funding structure created two problems: (1) a heavier burden was placed on companies involved in termite work compared to other pest control companies and (2) the perception that the part of the industry that pays the TARP fees had greater control over OPM. The Task Force's proposed funding structure based fees primarily on the number of applicators a company has rather than the type of company. Thus, larger pest management firms with more pesticide applicators would pay more than the smaller pest management firms. The proposed funding structure would also intentionally result in a net decrease in OPM's revenue. These changes would reduce the overall fee burden on the industry while still providing sufficient operating monies to OPM, which has already reduced its operational costs through the help of ADA.

The Task Force submitted its recommendations for changing OPM's statutes and rules to the Governor, the President of the Senate, and the Speaker of the House in November 2012. Although the Task Force knew that the Legislature was only responsible for changing statutes, it wanted to make the Legislature aware of its recommended rule changes as well so that the Legislature would be aware of the overall effect of the recommended statutory changes. The Task Force's recommendations on statutory changes became SB1290 (2013) and SB1143 (2013), albeit with a few changes made by the Legislature. Both bills passed and were signed into law. *See* Laws 2013, ch. 125 & Laws 2013, ch. 64.

This rulemaking adopts in substantial part the rules recommended by the Task Force, as submitted to the Governor, President of the Senate, and Speaker of the House in November 2012, with respect to Laws 2013, ch. 125. Because the session law varied a little from the statutory changes recommended by the Task Force, some corresponding changes to the recommended rules are also needed and this rulemaking does that. New rule 104 adds a pest management advisory committee, and the licensing time frame rule has been moved back to its original spot at rule 107. New rules 213 and 406 relate to responsible individuals for political subdivisions, with rule 213 pertaining to notifying OPM who the responsible individual is and rule 406 describing the responsible individual's responsibilities. In rules 201(B), 205, 208(E), 402, 405, and 504, references to political subdivision qualifying parties have been removed and replaced with references to school districts. Rules pertaining to continuing education have been moved from rules 213 and 214 back to their original spot at rules 215 and 216. The rule for joint responsibility has been moved from rule 406 to rule 407. The certification categories with respect to wood destroying organisms have also been adjusted to make clear that a person certified in the subcategory of wood destroying insect inspection can prepare WDIIRs. This change affects rules 102, 201(D)(3), and 307(A). Finally, throughout the rules, references to the A.R.S. have been updated to reflect renumbering by the Legislature.

This rulemaking also makes some additional changes to the Task Force recommendation designed to improve the rules. The need for these changes was identified after the Task Force submitted its final recommendation in November 2012 and some of these changes are based on recommendations of OPM's Pest Management Advisory Committee.

The changes to Article 1 are as follows. The definition of "service container" has been updated to better match ADA's definition of service container. The definition of "new-construction treatment" has been made more specific to say a "treatment to all cellulose components of a structure as prescribed by the pesticide label to protect the structure" instead of just a "treatment that protects all cellulose components." A definition of EPA registration number has been added that includes the exemption provision for products exempt from registration; that way, if a product does not have an EPA registration number because it is exempt from registration under section 25(b) of FIFRA, a person can write "25(b) exemption" in place of the registration number. The definition of pesticide has been clarified so that the list of pesticide types is not all inclusive. The wood-destroying insect inspection category has been clarified to specify that preparing treatment proposals are excluded. The right of way category now relates to all pests instead of just invertebrate pests. The fee for QA broadening has been reduced from \$150 to \$100. The fee for registering as a QP has been eliminated where the person registers at the same time the applicable business license is being licensed or renewing its license. The fee for branch supervisor registration has been eliminated where the person registers at the same time the applicable branch office is being registered or renewing its registration. The license, certification, or registration late fee in rule 103(C) has been cut from equal to the renewal fee to half of the renewal fee. The \$0 TARP fee in rule 103(D)(3) has been clarified as only applying when a structure is under its original warranty. A late fee has been added to rule 103(D)(5) for late final grade TARFs.

The changes to Article 2 are as follows. Rule 201(C)(2) has been changed in two ways: (i) it reduces the time for a certified applicator to work out of category from 90 days to 30 days, which is consistent with past OPM requirements, and (ii) it specifies the supervision required when a certified applicator works out of category. Rule 201(E)(3) has been rephrased from "University employee" to "authorized representative of any educational institution engaged in research in the study of pest management" to more precisely identify whom the exemption applies to. References to e-mail addresses in rules 202(A)(1)(c), 202(A)(2)(g), 203(A)(6), 204(B)(7), 206(B)(1)(f), 206(B)(2)(f), 208(B)(1)(b), and 209(G)(11) no longer have the phrase "if any." In rule 202(A), subsection (A)(2) has been removed as unnecessary except for (A)(2)(f), which has been moved to (A)(4). In rule 203(A), the requirement to provide the certification category has been removed as unnecessary. Rules 203(B)(3) and 204(E)(3) involving sexual offenses where the vic-

**Notices of Exempt Rulemaking**

tim is a minor have been reworded for clarity and now include class 4 felonies. The addition of class 4 felonies brings in taking a child aged 15-17 for the purpose of prostitution and certain voyeurism offenses. *See* A.R.S. §§ 13-1424 & 13-3206. Rules 203(D) and 207(D) have been revised to make clear the new age requirement only applies to new licensees. Rule 204(C)(3) regarding experience of unlicensed applicators from other states has been clarified to say verifiable experience. In rule 205(A), the information required to register a QP has been reduced. In rule 206, the information required to register a branch office and branch supervisor has been reduced, though a requirement has been added that branch supervisors get the signature of an authorized representative of the business licensee. In rule 207(B), there is now less information required to register an applicator who is certified. In rule 208, subsection (F)(1) has been moved up to new subsection (D), subsection (F)(2) has been moved to subsection (E)(3) and revised to more clearly address how the testing requirement applies after a certification has expired, subsection (E)(4) has been changed to only apply to business licenses, and subsection (E)(5) has been clarified. Rule 209 has been reworked to more accurately identify who can transfer a business license without a fee and under what conditions and to reduce and correct the information needed when a business changes its name or entity form. The QA broadening ability in rule 210(B) has been expanded to include QAs who have the experience listed in rule 204(C) even if they don't have a current applicator's license. In rule 211(D), the test taking limit has been changed from three retakes in a one year period to three total attempts in any six month period, which actually makes it possible to test six times in one year. In rule 215, language has been added to emphasize that CEU credits do not carry forward and a grammatical change was made to subsections (A) and (B). Rule 216(B)(7) has been revised to make clear that OPM only needs to know whether a fee is charged as opposed to the amount of the fee. The second sentence of rule 216(G) has been removed as redundant of subsection (C)(4).

The changes to Article 3 are as follows. Rule 301(A) has been supplemented to recognize that formerly registered pesticides may still be used as long as the pesticide does not have an end use date imposed by EPA that has passed. The language originally proposed to be stricken from Rule 301(F) has been left in. Rule 301(G) has been revised to require an EPA label and labeling at the time of a special local need application. In rule 302(B), pesticide contamination has been clarified to refer to contamination on the outside of the container. Rule 303(E)(6) has been supplemented so that the fresh water requirement means at least 1 gallon of water. Rule 306(A)(7) has been made more flexible in terms of how the amount of pesticide applied can be reported. Rule 306(B) has been added to allow for customer notification by email. "WDIIRs" has been added to the title of rule 307, new subsection (F) has been added to emphasize that an applicator does not have to inspect separate structures on the same property while newly requiring the applicator to state why the separate structures were not inspected, and new subsection (G) has been added for clarity. In rule 308(F)(2), the phrase "unless precluded by label directions" has been added. In rule 308, former subsections (F)(1) and (F)(3) have been moved to subsections (I)(1) and (I)(2), while former subsection (F)(2) has been revised and moved to subsection (H). The word "warranties" has been added to the title of rule 309. In rule 309(B), the word "subterranean" was added in front of "termite." In rule 309(C), the rule is being clarified that only the affected area needs to be retreated as opposed to the whole structure.

The changes to Articles 5 and 6 are as follows. Rule 501(B)(7) has been made more flexible in terms of how the amount of pesticide applied can be reported. In rules 501(E) and 503(D)(5)(c), the references to wood destroying insect inspection have been changed to WDIIR. Rule 501(E)(5)(g) has been expanded to require listing a reason if other structures on the same property were not inspected for a WDIIR. In rules 502(C) and 503(B)(8), the time period for keeping certain employee records has been clarified as being three years and that the duty continues after the employee stops working for the business. In rule 503(A)(10), the recordkeeping requirement regarding copies of certifications and the reference to W-2 forms have been removed as unnecessary. In rule 503(B)(1), the requirement that political subdivisions maintain their records at their primary business office or branch office has been dropped as this wording does not make sense with respect to political subdivisions. *See* rule 406(2) (requiring political subdivisions to report where the records are kept). In rule 505(A), the reference to "detected in Arizona" has been clarified to say "detected in Arizona groundwater." Also in rule 505, the responsibility for reporting by political subdivisions has been placed on the political subdivision's applicators because they do not have a QP. In rule 606(E)(5), the phrase "including imposing probation requirements after a suspension ends" has been added.

One of the things evident from the Task Force meetings is that reform brings about a host of consequences, all of which will not be fully realized without some experience. OPM expects that reform, including this rulemaking, will remain a work-in-progress with further fine tuning and more dialogue with stakeholders. This will be done, as appropriate, with the assistance of the OPM Advisory Committee and with feedback from the industry.

- 7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None.

- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

- 9. The preliminary summary of the economic, small business, and consumer impact:**

This rulemaking is exempt from the requirement to prepare an economic, small business and consumer impact statement. OPM does note that formerly most of OPM's revenue came from TARF fees, paid by companies doing termite

Notices of Exempt Rulemaking

work, but under this rulemaking TARF fees are being reduced by 75% and license fees are being increased to make up the revenue and to more equitably spread fees across the entire industry instead of focused on the termite businesses. Further, because of cost efficiencies OPM has achieved, the total fee burden to the industry will be decreasing.

**10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**

Not applicable.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

The nine-member Task Force itself consisted of eight stakeholders. As noted in item #6 above, this rulemaking adopts in substantial part the rules recommended by the Task Force, as submitted to the Governor, President of the Senate, and Speaker of the House in November 2012. The eight stakeholders that served on the Task Force have not commented on the changes and additions (described in item #6) that OPM has made to their recommendation since November 2012.

Between August 2011 and October 2012, the Task Force and its subcommittees held over eighteen public meetings to review the laws and regulations governing structural pest management and to develop proposed statutes and rules. In the initial meetings, the Task Force focused on core issues. These issues included topics such as criminal background checks, renewal periods, inactive license status, qualifying parties (need for, responsibilities, qualifications), and termite action report forms (TARFs). In later meetings, the Task Force had proposed rule revisions in front of them for consideration and for public comment. The proposed rule revisions were a work-in-progress and were updated for each subsequent Task Force meeting. OPM notes that some commenters repeated their same comments in multiple meetings, so a repeated reference below to a concern does not necessarily mean that several people shared that opinion. By the time the proposed rules were approved by the Task Force on October 17, 2012, the Task Force had reached a consensus on the proposed changes, even though there was not universal agreement on all issues from other stakeholders. OPM understands that all the changes will not please every person, but OPM recognizes that the Task Force was formed specifically by the Legislature with a purpose of reviewing all regulations governing structural pest management in this state. Accordingly, OPM favors the final Task Force recommendations over contrary stakeholder comments.

September 14, 2011 Task Force meeting

During the Task Force's September 14, 2011 meeting, the Task Force received these general comments that relate in part to OPM's rules. One commenter said that the TARF database contains some wrong information about the history of a property. One commenter thought that all types of treatments at homes should be reported. The final Task Force recommendation and this rulemaking do not require reporting of all types of treatments at a home. The commenter's idea did not have general support from the industry and would place a huge burden on the industry and OPM. One commenter did not want to compete with OPM in the area of providing initial licensure training classes. OPM plans to limit its training to laws.

October 18, 2011 Task Force meeting

During the Task Force's October 18, 2011 meeting, the Task Force received these general comments that relate in part to OPM's rules. One commenter expressed that a person should be able to contract for pest control services at the person's business property from a licensed applicator, even if that applicator is not associated with a licensed pest control business. A Task Force member responded that general business insurance policies do not cover pesticide applications. One commenter stated that not all QP licensing categories should require the same amount of experience. The final Task Force recommendation and this rulemaking agree with this comment and include different experience levels based on the category for broadening a QA license, which is needed to be a QP. Another commenter thought that the QP experience requirement should be harder. The final Task Force recommendation and this rulemaking change the initial experience requirement from 3000 hours to two years. For some, the new requirement will be take longer to obtain the necessary experience, though the Task Force felt and OPM feels that generally this new requirement will be easier to satisfy. One commenter said that a practical test should be required in addition to a written test. OPM feels that this may be a good idea one day, but OPM is not prepared to meet the administrative burden of developing and implementing a practical test at this time.

November 16, 2011 Task Force meeting

During the Task Force's November 16, 2011 meeting, the Task Force received these general comments about qualifying parties that relate in part to OPM's rules. One commenter questioned whether a QP is needed and another commenter felt that the QP requirement should be eliminated. The Task Force felt and OPM agrees that a qualifying party is needed. One commenter spoke about expanding the role of the QP by holding the QP to a higher standard and responsibility, making the QP responsible for the day-to-day operations of the business and training of employees, making the QP be responsible for ensuring that business's applicators obtain continuing education, making the QP write the business's protocols, shifting the responsibility for insurance from the business licensee to the QP, and making the QP responsible for maintaining all documentation. The commenter also stated that the QP should have 3000 hours of experience, but that a separate applicator license should not be required. Members of the Task Force felt and OPM agrees that many of this commenter's suggestions go beyond what OPM needs to regulate and that the focus of

**Notices of Exempt Rulemaking**

the QP from a regulatory perspective is pesticide related activities, not all business activities. The final Task Force recommendation and this rulemaking agree that a QP does not need a basic applicator's license in addition to the QA license. The Task Force and OPM have rejected the 3000 hour requirement going forward as unfairly difficult to prove in many instances and instead this rulemaking uses a two year licensure requirement. One commenter expressed that the statutes should have definitions and the rules should set out responsibilities. The final Task Force recommendation and this rulemaking set out the QP responsibilities in rule.

During the Task Force's November 16, 2011 meeting, the Task Force received these general comments about issues other than qualifying parties that relate in part to OPM's rules. One commenter expressed that the TARF database is inaccurate and worthless for real estate transactions. One commenter said that most businesses won't use the database unless real estate is involved. One commenter requested that additional information be added to the TARF database to show the action performed with the company name and license number. One commenter indicated the return on investment of TARFs is lower than the return on investment for doing background checks. The final Task Force recommendation and this rulemaking keep TARFs. Although there was varied opinion by industry members on this topic, the apparent majority view is that the TARF database does have some value and is much more acceptable with the new TARF fee of \$2 rather than \$8.

January 11, 2012 Task Force meeting

During the Task Force's January 11, 2012 meeting, the Task Force received these general comments about qualifying parties that relate in part to OPM's rules. One commenter stated that, with respect to QP qualifications, there is no substitute for experience. Another commenter felt that lowering the experience requirement would result in massive fraud and compliance issues. The same commenter expressed that there should also be standards to obtain a business license. A third commenter spoke in favor of changing the 3000 hour experience requirement for QPs to a minimum of two years of licensure as an applicator. Three other commenters spoke in favor of keeping the 3000 hour experience requirement for QPs. Still another commenter suggested that the QP license vary by the size or type of treatment, such as whether a residence is involved, and that a QP who refuses to help verify the 3000 hour experience requirement for an applicator wanting to become a QP could be assessed a penalty. One commenter explained the problem with business owners being unable to broaden their QP license into other categories because they lack 3000 hours of experience in that particular category. Another commenter felt that 3000 hours of experience is not necessary to be a QP for weed control. Two commenters spoke about the need for proper training in relation to those applicators who might become a QP. One commenter said that only looking at the last five years for experience is not fair. The Task Force took an informal poll of the meeting audience and found that the vast majority favored keeping the QP. OPM recognizes that there are diverse opinions among the industry as to the appropriate amount of experience a QP should have.

The final Task Force recommendation and this rulemaking establish two years of licensure as an applicator over the past 10 years as the baseline experience requirement for becoming a QP. To be more specific, to be a QP, a person must have a QA license and the QA license requires two years of licensure; a QP does not need additional experience after becoming a QA. The final Task Force recommendation and this rulemaking also offer an alternative to two years of experience: one year of licensure plus certain educational qualifications. See rule 204(C). Once a person gets licensed as a QA in certain categories, the person may broaden the QA license into certain other categories without an additional two years of applicator licensure in those categories. See rule 210(D). The Task Force was not and OPM is not in favor of keeping the 3000 hour requirement because of the complications involved in establishing those hours, including the fact that businesses were often unwilling to assist in verifying those hours because a new QP may become a competitor of the business.

During the Task Force's January 11, 2012 meeting, the Task Force received these general comments about issues other than qualifying parties that relate in part to OPM's rules. One commenter spoke in favor of termite action report forms (TARFs) and another commenter spoke against it. The final Task Force recommendation and this rulemaking keep the TARF requirement, though the TARF now requires less information and has a much lower fee. Another commenter cited the rule on having chemicals "locked" during transport and explained that having the chemicals locked is not always possible and that "secured" would be better. The final Task Force recommendation and this rulemaking have not changed the word "locked" to "secured." The same commenter also asked for a review of the scope of the aquatic category. The final Task Force recommendation and this rulemaking do revise the scope of the aquatic category, which now clearly allows pest management in water found in a water retention basin and control of mosquito larvae found in water, whereas the old category excluded water retention basins and mosquito control completely. One commenter said that home inspectors should be able to prepare wood destroying insect inspection reports (WDIIRs). This idea proved to be controversial. OPM's revised statutes do provide authority, at OPM's election, through rulemaking for individuals only doing inspections to be exempt from the QP and business license requirements, but the final Task Force recommendation and this rulemaking do not implement that discretionary authority. However, this rulemaking does allow a home inspector to document evidence of wood destroying insects during the home inspection without an OPM license as long as the home inspector does not prepare a WDIIR, prepare a treatment proposal, make treatment estimates, bids, or recommendations, apply pesticides, or use devices.

February 15, 2012 Task Force meeting

During the Task Force's February 15, 2012 meeting, the Task Force received these general comments about issues that relate in part to OPM's rules. One commenter reported on two town hall meetings hosted by the Arizona Pest

**Notices of Exempt Rulemaking**

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Professionals Organization during December 2011 and January 2012. The commenter explained that the general feeling on the elimination of OPM background checks was that the added expense for the business to conduct the background check instead would be leveled out by the time savings involved in getting employees licensed as applicators. The commenter added that the majority, but not all, agreed with the elimination of OPM background checks. The commenter also explained that the majority was in favor of keeping the QP requirement. The commenter further stated that there was general agreement that TARF fees should be eliminated or reduced and that there is a use for the TARF database, but that corrections are needed. The final Task Force recommendation and this rulemaking do keep the QP requirement, eliminate OPM background checks, and reduce TARF fees. The correction of the TARF database is an administrative issue, not a rulemaking issue. OPM also notes that some perceived mistakes in the database are due to a user's lack of knowledge on how to search the database.

Two commenters expressed concern that a person may possess two years of licensure as an applicator and thus qualify to become a QA (and QP) without actually having much experience working. OPM recognizes this is a potential concern and wants to ensure that the QA licensing exam requires an appropriate level of knowledge in order to make sure QAs (and QPs) have the necessary knowledge. OPM also recognizes that an applicator with lots of experience may not have been appropriately trained to do the work correctly, which again makes an appropriate licensing exam a key. One commenter thought that the continuing education requirement for QPs should be raised. The final Task Force recommendation and this rulemaking do raise the continuing education for QAs from six hours annually to 12, and a person must be a QA to be a QP. One commenter suggested registering employees to ensure that they are actually working during the two years of licensure needed to become a QP. The final Task Force recommendation and this rulemaking elect to go with the easier to administer and more straight forward method of time of licensure rather than time of employment.

One commenter stated that termite licensing fees are too high. The final Task Force recommendation and this rulemaking actually increase licensing fees overall in order to compensate for the reduction in TARF fees. The Task Force, OPM and the general feedback from industry support less dependence on the termite control industry for fees (which vary significantly year to year based on the housing industry) and more equal distribution of OPM's revenue requirements across the industry as a whole. OPM notes that although certain fees are increasing under this rulemaking, the overall revenue OPM expects to receive is actually decreasing, meaning that there will be a lesser burden overall on the industry.

Three commenters desired licensing categories B2 and B8 to be combined. The final Task Force recommendation and this rulemaking do have a new category that combines the former B2 and B8 categories (see rule 102(2)(a)), while still maintaining a separate inspection category (see rule 102(2)(b); formerly B8). This eliminates the complication of businesses and applicators needing two licenses for termite control, while maintaining a separate category for businesses only interested in doing inspections. One commenter wanted a reciprocity agreement that would allow inspectors certified by the Board of Technical Registration to inspect for termites while another commenter spoke against this. After much discussion on the issue, the Task Force and OPM ultimately determined that OPM licensure is needed to prepare a WDIIR, in part because the Board of Technical Registration does not adequately cover this subject matter in its testing and laws.

One commenter asked whether there is a need for OPM to require businesses to perform their own background checks and another commenter agreed that this was a good idea. The final Task Force recommendation and this rulemaking do not require background checks by businesses. OPM feels that is a business risk and that businesses can decide for themselves whether to conduct background checks. One commenter suggested that OPM offer background checks as an optional service because of OPM's ability to do higher quality checks. The final Task Force recommendation and this rulemaking do not include this option because OPM's revised statutes do not provide that ability.

One commenter said that people wanting to be licensed for weed control should have to at least pass the core exam. The final Task Force recommendation and this rulemaking do require an examination for licensure in every category. Another commenter questioned the need for any experience requirement if the examination tests a person's knowledge and experience well. The Task Force and OPM recognize the need for both experience and an examination when it comes to licensure as a QA (and QP). One commenter felt that the TARF database does not protect consumers, that few relators use the system, and that inspections should be private. After much discussion on the issue of the TARF database, the final Task Force recommendation and this rulemaking reflect the decision to keep the TARF database, but to require less information and a lower TARF fee. One commenter suggested a flat annual fee charged to all companies would be more fair. The final Task Force recommendation and this rulemaking set up a fee structure that OPM feels is more fair than the previous fee system by charging all businesses an equivalent fee for a business license and charging additional registration fees based on the size of a business (by number of employees), as well as by lowering the TARF fee for companies engaged in termite work.

March 14, 2012 Task Force meeting

During the Task Force's March 14, 2012 meeting, the Task Force received these general comments about issues that relate in part to OPM's rules. One commenter expressed that a QP should not be responsible for equipping applicators because the QP doesn't have authority to purchase the equipment. OPM points out that equipping is a responsibility imposed on QPs by statute. The same commenter recommended dropping the QP requirement all together. As already stated, the majority of the commenters were in favor of keeping the QP requirement, and that is what the Task Force recommended as well. One commenter stated concern that changing termite treatments to wood destroying insect



**Notices of Exempt Rulemaking**

treatments would result in TARFs being required for carpenter ant treatments. This issue is addressed in statute, and TARFs are limited to termite related services. One commenter stated that OPM should make sure businesses don't have conflicting names or should at least notify new businesses that they could face legal action for infringing on another business's name. A second commenter agreed with the business name comments. Members of the Task Force felt and OPM feels that the name of the companies is a private matter, so this rulemaking does not address business names. One commenter stated that treatment of mosquito larvae, which are found in water, should be covered by the aquatic category. The final Task Force recommendation and this rulemaking support this view and amend the aquatic category so that mosquito larvae found in water is covered by that category.

Three commenters addressed the issue of managing birds with spikes and suggested that activity should be regulated by OPM. The final Task Force recommendation and this rulemaking exempt people from licensure if they only use certain devices, including bird spikes. OPM does not believe a person who only uses bird spikes needs to be certified as a pesticide applicator. One commenter stated that a person should not need a license to put a screen on roofs or to fill a hole with caulking or screening. The final Task Force recommendation and this rulemaking support this opinion. See rule 304.

Two commenters asked whether the exemptions to licensure available to people applying pesticides on behalf of a political subdivision could apply to people not acting on behalf of a political subdivision. A.R.S. § 32-2311.01(D) contains three exemptions to licensure. The first exemption is applying pesticides for 90 days or less. Applicators working for a business have this same exemption. OPM would have no method of tracking whether a person not working for a licensed business or a political subdivision had been applying pesticides for longer than 90 days. Also, an applicator working for a licensed business or political subdivision will have their activities covered by insurance, while a person doing it some other way likely would not. The second exemption is performing emergency response or rescue services. OPM cannot imagine a situation where a person would be using pesticides while performing emergency response or rescue services and not be working for or an agent of a political subdivision. The third exemption is a volunteer controlling noxious weeds who has completed an herbicide application training program approved by OPM and who is under the immediate supervision of a licensed applicator. One problem with expanding this exemption to the general public is the issue of who would teach the training program. In addition, OPM is unaware of any need or consumer demand by unpaid workers (volunteers) for this exemption to be expanded.

One commenter stated that the Board of Technical Registration does not test about termites on the home inspector licensure exam and that home inspectors are not allowed to refer business. Another commenter thought that a license should not be needed to only identify wood destroying insect damage to the home as opposed to identifying termites. After much discussion on the issue, the Task Force and OPM ultimately determined that OPM licensure is needed to prepare a WDIIR. However, this rulemaking does allow a home inspector to document evidence of wood destroying insects during the home inspection without an OPM license as long as the home inspector does not prepare a WDIIR, prepare a treatment proposal, make treatment estimates, bids, or recommendations, apply pesticides, or use devices.

April 18, 2012 Task Force meeting

During the Task Force's April 18, 2012 meeting, the Task Force received these general comments about issues that relate in part to OPM's rules. One commenter expressed concern that the groundwater protection list will expand to include pesticides used only by structural pest control companies. Another commenter stated that the groundwater protection list did not deal with chemical runoff and that he did not see it necessary to add any pesticides to the list. OPM states that there is no intent to add new pesticides (related to structural applications) to the groundwater protection list and this rulemaking contains no additions. One commenter stated that leaching is not a problem everywhere in Arizona and that in places water is found at 350 feet. The same commenter noted that other states that required reporting had groundwater at 60 feet. A Task Force member noted that groundwater is found between 3 and 30 feet in Yuma. One commenter had no problem with making groundwater protection list reports on termite jobs, but did have concern about doing so for smaller jobs around a home. A member of the Task Force explained that chemicals that are not soil applied do not have to be reported, such as the smaller jobs referred to. One commenter suggested that OPM develop a simplified monthly reporting form to ease the burden of reporting. This is an administrative issue rather than a rulemaking issue.

One commenter asked if OPM planned to stop using the Office of Administrative Hearings. OPM plans to continue using the Office of Administrative Hearings under the authority in Title 41 and does not need to repeat that authority and those procedures in its own rules. One commenter thought that 6 months might be too short of a time limit for investigations, but did submit that some time limit was needed. OPM responds that neither the Task Force recommendations nor this rulemaking set a time limit for completing an investigation. One commenter thought a QP should have to be present at the main business office daily instead of monthly. One commenter wanted a business license fee threshold of no more than \$2,500. OPM's revised statutes do not put a statutory limit on business license fees, but this rulemaking only includes a \$300 fee for a business license. The same commenter stated that California requires employers to verify the hours of employees needed for licensure. Another commenter did not understand why a verification form would be needed. One commenter said having employers verify dates of employment would be easy, that registered contractors verify their own hours by submitting W-2s and pay stubs, and that applicants should keep their own records. One commenter said that having registered employees would make them easier to track. The final Task Force recommendation and this rulemaking do not require the hours of a certified applicator to be verified, so the comments on this point are moot. One commenter reported on a February 2012 town hall meeting and said that

**Notices of Exempt Rulemaking**

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one comment was that the \$8 TARF fee is too much. Another commenter disputed that the town hall meeting included that comment. The final Task Force recommendation and this rulemaking set the TARF fee at \$2.

May 15, 2012 Task Force meeting

During the Task Force's May 15, 2012 meeting, the Task Force received these general comments about issues that relate in part to OPM's rules. One commenter stated that a final grade treatment is unnecessary following a new construction treatment. OPM disagrees with this comment. Two commenters thought the time frame table should clarify which columns pertain to OPM and which pertain to the applicants. The final Task Force recommendation and this rulemaking make this clarification.

One commenter explained the purpose of the 90 day applicator licensure exemption. Another commenter did not see a reason for the 90 day exemption. A third commenter spoke in favor of the 90 day exemption. The final Task Force recommendation and this rulemaking maintain the 90 day applicator licensure exemption.

Three commenters spoke in favor of 12 hours of continuing education for QAs instead of 15 hours. The final Task Force recommendation and this rulemaking include 12 hours of continuing education for QAs. Another commenter expressed concern that inactive licensees might lose their license for failure to obtain the required continuing education. OPM points out that while this is a potential concern, it is now much easier for a person to get their license back. One commenter stated that people who leave his continuing education courses early do not get credit. OPM is in favor of this principle, but has yet to come up with an effective method for ensuring this occurs. Two commenters spoke about getting continuing education credit for training on technology. OPM believes that the goal of continuing education is to make sure people know how to properly use pesticides, not technology. Another commenter said that there used to be a provision allowing two hours of continuing education credit in something other than pest control, such as management, and suggested this would allow applicators to get credit for studying technology. OPM believes this would add an unnecessary tracking burden on the agency.

Three commenters disagreed with a proposal to allow a QA in the general pest category to test as a QA in the termite management category without termite experience. Another commenter agreed with the proposal. The final Task Force recommendation and this rulemaking allow a QA in the general pest category to test as a QA in the termite management category without termite experience. OPM believes the majority feeling is that a QA in the general pest category is sufficiently experienced to supervise termite work if the person is knowledgeable enough to pass the termite examination.

One commenter stated that stucco below grade is a condition conducive to termites and cannot be inspected properly. The final Task Force recommendation and this rulemaking require reporting this condition on a WDIIR. One commenter asked if the fee waiver for transferring a business to a spouse could apply in domestic partnership situations as well. See rule 209(A). OPM responds that it is not aware of a state domestic partnership law in Arizona and that the issue is one for the Legislature.

The same commenter thought that writing the EPA number on notices takes too much time and that the active ingredient is more applicable, except for restricted use pesticides, and easier to write. Another commenter disagreed and stated that fire departments refer to the EPA number in pesticide poisoning cases. A third commenter felt that the EPA number is relevant to the consumer. The final Task Force recommendation and this rulemaking require the EPA number on notices to consumers only when a restricted use pesticide is involved.

One commenter stated that heat treatment of bedbugs is as important as pesticide control. Another commenter said that people using dogs for bedbug control should be licensed through OPM and be certified by an independent third party. The final Task Force recommendation and this rulemaking regulate the use of devices except as indicated in rule 304. Heat treatments and the use of dogs are not exempt.

One commenter felt the groundwater protection list would be broadened by ADEQ if the structural pest control industry had to report. OPM responds that ADEQ is limited to listing agricultural use products. One commenter was opposed to reporting under the groundwater protection list and felt that the reporting would give ammunition to people against the use of pesticides. One commenter said that it is not cost effective to report on low level uses and that a minimum use level should be set before reporting. OPM responds that in the experience of the agriculture community, the more data they have to defend their position the better off they are.

The same commenter stated that most states have dropped their termite warranty requirement to one year and that some of these states had worse termite activity than Arizona. Another commenter said that the warranty is currently five years because the treatment has to last five years per government testing requirements and also felt that homeowners would be upset if the warranty dropped to two years. This commenter further said that a one year warranty is too short and a five year warranty is too long. One commenter thought a two year warranty would be fair. Another commenter wanted to leave the warranty at five years, but thought that two or three years is a good compromise. This commenter also expressed concern that a one year warranty would lead to lower quality work and only a short window of protection for the homeowner. Another commenter had read that many termite treatments do not last two years and that the structures remain termite free because the termites have not found the structure yet. The final Task Force recommendation and this rulemaking change the required warranty period to three years.

June 13, 2012 Task Force meeting

**Notices of Exempt Rulemaking**

During the Task Force's June 13, 2012 meeting, the Task Force received these general comments about issues that relate in part to OPM's rules. One commenter proposed incorporating training standards for bed bug dogs. The commenter was concerned about the training of the dogs and the dogs' handlers. Another commenter noted that the applicator is ultimately responsible to properly inspect and identify, not the dog. The final Task Force recommendation and this rulemaking do not set standards for dogs, but do require people using dogs in pest control work to be licensed.

One commenter questioned the maximum business license being \$5,000. The final Task Force recommendation and this rulemaking set the business license fee at \$300. One commenter did not like the government deciding what appropriate supervision is. OPM notes that federal regulations define the types of supervision and require supervision.

One commenter stated more discussion should be had on the amount of experience required to be a QP. One commenter stated that more than 50 petitions had been sent to the Task Force from people wanting to eliminate the QP requirement and that the QP was redundant and served no purpose. OPM recognizes that there are diverse opinions among the industry as to whether to keep the QP requirement and the appropriate amount of experience a QP should have. The final Task Force recommendation and this rulemaking maintain the QP requirement and establish two years of licensure as an applicator over the past 10 years as the baseline experience requirement for becoming a QP. To be more specific, to be a QP, a person must have a QA license and the QA license requires two years of licensure; a QP does not need additional experience after becoming a QA. The final Task Force recommendation and this rulemaking also offer an alternative to two years of experience: one year of licensure plus certain educational qualifications. See rule 204(C). Once a person gets licensed as a QA in certain categories, the person may broaden the QA license into certain other categories without an additional two years of applicator licensure in those categories. See rule 210(D). The Task Force was not and OPM is not in favor of keeping the 3000 hour requirement because of the complications involved in establishing those hours, including the fact that businesses were often unwilling to assist in verifying those hours because a new QP may become a competitor of the business.

Two commenters spoke about issuing certificates after a continuing education class: one did and one did not. One commenter said that QPs should keep records of the continuing education courses the applicators attend. The final Task Force recommendation and this rulemaking do not require continuing education providers to provide a certificate to attendees or require a QP to track applicators' continuing education courses.

One commenter spoke against a proposed rule that would allow licensed home inspectors to prepare WDIIRs without an OPM business license and QP, in part because the home inspectors' insurance would not cover termite inspections and in part because the commenter felt it would be a violation of the Board of Technical Registration's rules. Another commenter agreed with the home inspector comments. A third commenter stated that home inspectors were concerned with OPM licensing fees, not insurance or Board of Technical Registration rules. A fourth commenter said that everyone should have to go through the same training, obtain the same licenses, and pay the same fees. The final Task Force recommendation and this rulemaking do not include a rule that exempts home inspectors from certain licensing requirements. However, this rulemaking does allow a home inspector to document evidence of wood destroying insects during the home inspection without an OPM license as long as the home inspector does not prepare a WDIIR, prepare a treatment proposal, make treatment estimates, bids, or recommendations, apply pesticides, or use devices.

One commenter stated that an unlicensed person should never handle a fumigant. Another commenter stated he was very reluctant to see an unlicensed applicator handling a fumigant. Another commenter said she would not let a trainee near a fumigant. One commenter was opposed to allowing unlicensed people to handle restricted use pesticides. The final Task Force recommendation and this rulemaking require immediate supervision, i.e. direct line of sight or within hearing distance, whenever an unlicensed applicator is handling a fumigant or restricted use pesticide. See A.R.S. § 32-2325(A)(5) & rule 201(C)(3)(c)(ii).

June 15, 2012 Task Force groundwater use reporting subcommittee meeting

During the Task Force's groundwater use reporting subcommittee meeting on June 15, 2012, there were no public comments.

June 19, 2012 Task Force devices subcommittee meeting

During the Task Force's devices subcommittee meeting on June 19, 2012, the subcommittee received these general comments about issues that relate in part to OPM's rules. There was one public commenter at the meeting who made the following remarks: using dogs is just like using another inspector, that biological devices would also cover things like lady bugs and that the definition of device should not include that, that exempting certain devices would exempt bird control, that the Registrar of Contractors does not test for bird control issues, that the term identifying should not be included in the definition of devices, that people putting up screens to keep out pests without being paid should not be regulated, and that OPM should regulate failure to provide enough product. OPM responds that the definition of device does not include the words biological or identifying, that the Task Force's recommendation and this rulemaking do not require licensure to use bird spikes and physical barriers, and that the Task Force's recommendation and this rulemaking do not regulate the failure to provide enough product except with respect to termite treatments and label requirements.

**Notices of Exempt Rulemaking**

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June 26, 2012 Task Force devices subcommittee meeting

During the Task Force's devices subcommittee meeting on June 26, 2012, there was one public commenter at the meeting who expressed appreciation that the meetings were public.

July 18, 2012 Task Force meeting

During the Task Force's July 18, 2012 meeting, the Task Force received these general comments about issues that relate in part to OPM's rules. One commenter thought that most things under OPM should be moved under the Department of Agriculture and that the duplicity of regulations should be done away with. OPM responds that OPM's revised statutes leave most pest control under OPM that was previously addressed by OPM, so OPM must continue to regulate these areas separately from the Department of Agriculture's rules. Nevertheless, OPM has made efforts to make its rules similar to the Department of Agriculture's rules in certain respects. The same commenter said that OPM and the Department of Agriculture should not regulate any device and that OPM should stick to pesticides. OPM received varied opinions on the extent devices should be regulated, including some asking for regulation of all devices while this commenter sought regulation of no devices. The final Task Force recommendation and this rulemaking attempt to reach a middle ground by not requiring licensure to use certain devices (see rule 304). With experience and continued input from the industry, the list of devices not requiring licensure to use may change in the future. The Task Force recognized and OPM recognizes that the use of some devices that do not involve pesticides, including bed bug heat treatment devices, should be subject to regulation in order to protect consumers. The same commenter thought that the proposed groundwater protection reporting requirement provided little benefit for the amount of overhead that would be imposed on industry and that it seems like an excuse to keep and expand the TARF database. OPM responds that in the experience of the agriculture community, the more data they have to defend their position the better off they are. The same commenter opposed unlicensed persons applying pesticides. The final Task Force recommendation and this rulemaking require immediate supervision, i.e. direct line of sight or within hearing distance, whenever an unlicensed applicator is handling a fumigant or restricted use pesticide. The final Task Force recommendation and this rulemaking also maintain the 90 day allowance for an applicator to work without a license, which is widely supported by the industry.

One commenter said that school districts do need oversight from a QP. Another commenter was in favor of QPs for political subdivisions. One commenter was against QPs for political subdivisions and said that the Legislature has rejected that idea several times. In OPM's revised statutes, school districts are required to have a QP, but other types of political subdivisions are not.

One commenter thought that it should only take 1 year of experience to broaden a QP license. Another commenter thought two years is fine. A third commenter was in favor of the proposal to allow broadening into the turf and ornamental category in certain circumstances without additional experience. Another commenter thought that allowing broadening from the general pest category to the right of way and turf and ornamental categories would solve a lot of problems and that perhaps 90 days should be the amount of additional experience required. One commenter was in favor of two years of experience and recommended a wait and see approach to determine if two years was too much, and if so, then to lower the requirements more rather than making the requirements too low to start. One commenter thought two years of experience was better than 3000 hours, but that there would still be a problem with respect to business owners who are not going to go to work for someone else in order to get the necessary experience. One commenter said that just because states around Arizona require QPs, it does not mean that the majority of states in the country require QPs. The final Task Force recommendation and this rulemaking make two years the initial experience requirement for becoming a QA, which allows a person to become a QP, and allows broadening into certain other categories without any additional experience. See rule 210(D). OPM believes this will greatly rectify burdensome barriers to entry, while maintaining appropriate standards of experience.

One commenter wanted OPM to protect consumers from phony devices being used for pest control. The final Task Force recommendation and this rulemaking do cover most devices, except for those listed in rule 304. Two commenters spoke against the idea of allowing owners to treat properties they own but do not occupy without a business license. The final Task Force recommendation and this rulemaking do not include that idea. One commenter shared an experience from the past about a person who did not receive warranty retreatments free of charge and that the agency did not do enough. OPM responds that it will enforce this rule and cannot do anything about a past matter handled prior to coming under the direction of the Department of Agriculture. One commenter asked if notice to customers could be done electronically. This rulemaking provides for electronic notice. See rule 306(B). One commenter questioned how much time a QP needs to spend at a branch office every 120 days. OPM responds that the QP needs to spend as much time as needed to complete the QP's duties.

October 17, 2012 Task Force meeting

During the Task Force's October 17, 2012 meeting, the Task Force received these general comments about issues that relate in part to OPM's rules. One commenter thought the definition of device was too broad, that the proposed regulations would not be enforceable, and that the Task Force should table the issue of devices. Another commenter agreed that the Task Force should continue to work on the issue of devices. One commenter said that devices should not be regulated at all and that regulation should only apply to the use of pesticides. The Task Force felt and OPM feels that this rulemaking addresses devices in an appropriate and enforceable way, while recognizing that all of the

**Notices of Exempt Rulemaking**

rules in this rulemaking package could be said to be a work-in-progress that may require future adjustment. In addition, the final Task Force recommendation and this rulemaking narrow the scope of devices requiring licensure, so not changing the former approach to devices would have actually gone against the wishes of the commenters.

One commenter asked if the fumigation category would cover soil fumigation. OPM responds that the fumigation category will be the same as before in this respect and that certain fumigants, by their labels, require training beyond just licensure in order to use them. The same commenter complained that the regulations do nothing to promote economic recovery, to protect the health, welfare, and safety of the consumer, that the regulations are growing, and that the proposal gives seven major corporations a bigger share of the economic pie. Another commenter said that the Task Force has added regulations and complexity without doing anything useful for consumers. As the Task Force reviewed the current statutes and rules, it particularly focused on developing a fair regulatory package that would be less burdensome on the regulated industry while continuing to provide protections for the public. The following examples of Task Force recommendations demonstrate that balance:

Reduce the education requirement to become a Qualifying Party (QP) from the confusing and burdensome 3,000 verifiable hours to simply two years of applicator licensure, which is a common requirement in other states.

Allow some QP licensees to broaden their license into other QP categories upon passing the required test without needing to satisfy the experience requirement.

Reduce the TARF fee from \$8 to \$2 per report and reduce the information required on the TARF and when it needs to be reported.

Eliminate mandatory government background checks for licensees; the regulated business will be responsible for their own employee screening. This reduces the backlog of state background checks and allows OPM to process applicator licenses more quickly and efficiently.

OPM also sought advice from its Pest Management Advisory Committee (PMAC) on the rules.

April 18, 2012 PMAC meeting

During PMAC's April 18, 2012 meeting, the Committee members made these general comments that relate in part to OPM's rules. One member said that the member's organization thought agency background checks were redundant because businesses already conduct background checks. Another member stated that the member does not hire anyone without a background check, but had concern about agency liability for licensing a person with a bad background. Another member expressed that the agency could require businesses to do the background checks without the agency itself doing background checks. One member felt that wood-destroying insect inspection reports should not require a TARF. The final Task Force recommendation and this rulemaking do not require background checks by businesses. OPM's statutes require a TARF for wood-destroying insect inspection reports.

During PMAC's April 18, 2012 meeting, the Committee received from members of the public these general comments that relate in part to OPM's rules. One commenter asked if background checks could continue for qualifying parties. Another commenter thought that agency background investigations set a standard. The final Task Force recommendation and this rulemaking do not require background checks by businesses. With respect to dropping the approval of business names, one commenter stated that the Secretary of State already has a name approval process.

July 18, 2012 PMAC meeting

During PMAC's July 18, 2012 meeting, the Committee members made these general comments that relate in part to OPM's rules. One member commented that the member liked the proposed provision allowing a QP to represent more than one political subdivision with permission from the Director. One member noted that a QP in California can represent more than one business. Another member thought a QP should be allowed to represent more than one political subdivision, but not more than one business. Two members wanted the language to clearly allow a QP to represent a business and a political subdivision or to clearly not allow that—the key is that the language is clear on what is allowed. Under OPM's statutes, political subdivisions do not need a QP. The final Task Force recommendation and this rulemaking do not allow a QP to represent more than one business or a business and school district at the same time, but does allow for a QP to represent more than one school district with permission from the Director. See rule 402. Several of the members commented that the Committee is beneficial and should be continued. One member thought the size of the Committee should be expanded to provide for more diversity, including someone not from a pest control company such as a political subdivision representative. Another member thought at least one Committee member should be from a rural area. The Committee unanimously recommended by motion to continue the Committee in the Task Force recommendations. OPM's statutes require a five member Committee with at least one public member. This rulemaking sets the five members as three business representatives, including one from a rural area, one political subdivision representative, and one public member. See rule 104.

October 17, 2012 PMAC meeting

During PMAC's October 17, 2012 meeting, the Committee members made these general comments that relate in part to OPM's rules. One member thought groundwater protection list reporting by zip code would be too tough and recommended reporting by county. The final Task Force recommendation and this rulemaking require reporting by county. See rule 505. One member expressed that perhaps the definition of pest management should be changed so that a person using exempt devices, like bird spikes, would not be considered as performing pest management. The

**Notices of Exempt Rulemaking**

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final Task Force recommendation and this rulemaking make it so that devices like bird spikes can be used without licensure.

During PMAC's October 17, 2012 meeting, the Committee received from members of the public these general comments that relate in part to OPM's rules. One commenter expressed concern over doing groundwater protection list reporting for spot treatments. The commenter also felt that reporting could be done by city, but that zip code would be difficult. The final Task Force recommendation and this rulemaking require quarterly reporting by county.

June 18, 2013 PMAC meeting

During PMAC's June 18, 2013 meeting, the Committee made recommendations on the draft rules. The Committee recommended making the time period for a licensed applicator to work in a new category without a license only 30 days as has been the law instead of 90 days as proposed because the 30 day time period has been working. The Committee also recommended requiring work done by an applicator in an unlicensed category to be supervised. This rulemaking incorporates these recommendations. See rule 201(C)(2). The Committee did not recommend requiring licensed applicators to register in the new category unless experience later shows that is necessary. One member commented that he did not believe the minimum age for an applicator should be 18. Another member said that his insurance company told him not to allow people under 18 to apply pesticides. This rulemaking allows current licensees to keep their licenses, but prohibits new licenses for people under 18. OPM notes there are difficulties in investigating minors because of the need to communicate with the parents. The Committee recommended changing the testing limit from three times in a 12 month period to three times in a six month period. This rulemaking sets the testing limit at three times in a six month period. The Committee and members of the public spoke about the draft proposal to allow electronic notification of customers with the customer's written consent. The feeling was that written consent should not be required, particularly since it would be burdensome to keep the proof of consent for every customer. This rulemaking allows customers to be notified electronically, but does not require written consent. One member commented that draft rule 309(C) is confusing in that it appears to require retreatment of the entire structure. This rulemaking clarifies that rule 309(C) applies to the affected area of the structure as opposed to the entire structure. One member expressed concern that requiring the QP to be present every 14 days might preclude a vacation longer than 14 days. OPM responds that the business can use a temporary QP in such situations. Committee members and a member of the public expressed concern over a draft proposal to require employers to keep copies of their employees' W-2 records. This rulemaking does not require a business to keep W-2 records. Committee members also felt that reciprocity under rule 212 should only apply to the core exam. The rule allows the Director to limit reciprocity to the core exam.

July 23, 2013 PMAC meeting

During PMAC's July 23, 2013 meeting, the Committee made comments and recommendations on the draft rules. One committee member advised that it is best to have applicants test during the first half of the 360 day testing period so that if the applicant has trouble passing the test, the applicant's three test limit over a six month period will be able to restart while still within the 360 days. The Committee generally felt that the QP should be ultimately responsible for making sure an applicator service record was emailed to the customer, when the company chooses to use email, but one Committee member noted that QPs for large companies cannot be expected to make sure every individual service record is emailed. The Committee did not recommend a change to the proposed language. OPM responds that it intends to take primary enforcement for failure to email service records against the person at a business responsible for sending the emails; where applicators do not have the ability to send the emails, the QPs will be responsible. The Committee also discussed proposed rule 308(H). Committee members sought clarification of when the warranty period would begin. One Committee member was concerned about long delays between a pre-treatment and the final grade treatment such that if the warranty started after the final grade treatment, then the company might be responsible for a warranty beyond the effectiveness of the pesticide. Another Committee member stated that some builders want the warranty before the final grade treatment is completed. The Committee discussed ways to allow a warranty to be issued after the pretreatment and before the final grade treatment, while still requiring a final grade treatment. One Committee member suggested warranties conditional upon completion of the final grade. Another Committee member suggested tracking the TARF database to ensure the final grade treatment was done. An OPM staff member suggested to the Committee removing the words "including a final grade treatment" from rule 308(H) because rule 308(F) still requires a final grade treatment to be done. The Committee liked this last option and recommended it. OPM responds that the phrase "including a final grade treatment" has been removed from rule 308(H). One Committee member also questioned whether a builder who pretreated a garage could issue a warranty for the entire house. OPM responds that rule 308 does not allow a warranty to be issued to a builder for the entire house if the entire house did not receive a pretreatment or new-construction treatment. Two Committee members exchanged comments about whether a warranty could be issued for just a garage, with one Committee member concluding that is not allowed. OPM responds that the rules do not preclude a company from issuing a warranty for only the garage if the garage received a pretreatment. The Committee also unanimously voted in favor of OPM adopting the rules presented at the meeting with the one change to rule 308(H) noted above, with the understanding that OPM may still need to make some additional wording changes. OPM responds that it did revise rule 201(E)(3), rule 209 and the title to rule 309 after the July 23, 2013 meeting; these changes are described in item #6.

During PMAC's July 23, 2013 meeting, the Committee also received from members of the public these comments that relate to OPM's rules. One commenter sought clarification on the six month time frame to attempt a licensing

**Notices of Exempt Rulemaking**

exam three times. OPM staff responded that the tester has 360 days to take and pass the test, but each test may only be taken three times during a six month period; the six month period begins on the date of the first test. One commenter questioned what immediately means in terms of providing a service record by email under rule 306. OPM responds that the ability to email a service record does not change or affect existing rules with respect to the timing of the notification. Another commenter noted that hand held record keeping devices make for complete and accurate information because the form cannot be submitted without completing all the fields. A third commenter said he doesn't see a difference between providing paper or electronic service records to customers—it falls back on the QP if the applicator does not do his job. One commenter said that the timing of issuing a termite warranty to a builder depends on the builder and that some want the warranty before the final grade treatment is completed in order to close on the sale of a house. OPM responds that the language in this rulemaking allows a termite warranty to be issued to a builder before the final grade treatment is completed. One commenter expressed concern over prior proposed language that required calculating the percentage of active ingredient used, but felt that the language proposed in this rulemaking was better.

In addition to receiving oral comments, OPM received the following written comments from members of the public, which have been organized by category.

QPs

OPM received four written comments supporting the QP and two written comments opposed to having a QP, in addition to written comments, surveys and petitions separately noted below. One supporter wrote that most industry members he has come in contact with do not support eliminating the QP. One additional person wrote that a QP is not needed for the right-of-way category. OPM responds that there are varying views on the need for a QP and that the Task Force recommended keeping the QP requirement. OPM also responds that QPs have a higher level of knowledge, as demonstrated by testing, and that if the QP requirement were eliminated, it is possible that all applicators would need to satisfy this higher knowledge level, thus making it much more difficult to become an applicator. QPs also serve an important role in supervising the pesticide use aspect of a business because business owners do not have to have any pesticide use knowledge at all.

OPM received several written comments about the experience requirement for QPs, not counting the written comments, surveys and petitions separately noted below. Two writers opposed the existing 3000 hour requirement and two writers favored it. Two writers favored two years of licensed experience. Another writer felt that two years of licensure might not ensure an applicator is qualified to act as a QP because not all experience is equal, but expressed support for an experience requirement of some type. Two writers favored experience requirements based on the licensing category. One writer also suggested considering educational experience, but not as a replacement for field experience. One writer suggested creating a school for potential QP applicants. The final Task Force recommendation and this rulemaking establish two years of licensure as an applicator over the past 10 years as the baseline experience requirement for becoming a QP. To be more specific, to be a QP, a person must have a QA license and the QA license requires two years of licensure; a QP does not need additional experience after becoming a QA. The final Task Force recommendation and this rulemaking also offer an alternative to two years of experience: one year of licensure plus certain educational qualifications. See rule 204(C). Once a person gets licensed as a QA in certain categories, the person may broaden the QA license into certain other categories without an additional two years of applicator licensure in those categories. See rule 210(D). The Task Force was not and OPM is not in favor of keeping the 3000 hour requirement because of the complications involved in establishing those hours, including the fact that businesses were often unwilling to assist in verifying those hours because a new QP may become a competitor of the business.

Two writers thought that a QP should not need a QP license and an applicator license. The final Task Force recommendation and this rulemaking make clear that a person does not need a separate QA license (including QP registration) and applicator license in most cases, the exception being where the person has an applicator license in some categories for which the person does not have a QA license.

One writer thought that a QP should only be joint responsible for acts of unlicensed applicators, a QP should be able to qualify more than one business, and the QP exam should include questions on business and contract law. OPM responds that the argument that QPs should only be responsible for unlicensed applicators is essentially the same argument made by others that a QP is not needed for licensed applicators. This view was not accepted by the Task Force and is not incorporated in this rulemaking. OPM believes this may be the only commenter seeking to allow a QP to qualify more than one business. OPM wants to end the rent-a-QP business, which often results in absentee QPs.

One commenter wrote in favor of political subdivisions needing a QP, but the OPM's statutes do not allow that.

Groundwater protection list reporting

One commenter suggested groundwater protection reporting occur annually, quarterly, or monthly, with monthly least favored. This commenter suggested limiting reporting to materials listed on the ground water table and only for termite pretreatments and pre-emergent weed applications. The commenter also suggested designing a simple reporting form or modifying the TARF and including the county, material, EPA number, date, and amount. The commenter also suggested having an exemption for minimal use, such as 6 ounce products, because of the reporting burden, having an exemption for termite post-treatments with a low amount of active ingredient, and having an exemption for post emergent weed applications applied directly to weeds. The commenter also expressed concern about opening the flood gates of additional reporting requirements by adding this reporting requirement. The final Task Force recom-

**Notices of Exempt Rulemaking**

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mentation and this rulemaking incorporate many of the suggestions made by this commenter, though one notable difference is that there is no exception for small use.

**TARFs**

OPM received three written comments supporting the TARF database and one written comment opposed, in addition to written comments, surveys and petitions separately noted below. Two writers were in favor of lowering the TARF fee and increasing licensing fees to make up the lost revenue. Two writers were in favor of the TARF, but recommended that less information be required. One writer made a suggestion to help escrow companies identify companies that did not submit a TARF. One writer claimed to use the TARF database daily. The final Task Force recommendation and this rulemaking keep the TARF system, lessen the information required, lower the TARF fee from \$8 to \$2, and raise licensing fees to make up the lost revenue.

**Continuing education**

One writer said that OPM should not rely entirely on electronic means of tracking attendance at continuing education courses because of the possibility of lost data and system malfunctions. OPM responds that licensees and continuing education course providers can keep paper copies of records, but OPM is not requiring them to. Another writer favored requiring continuing education in integrated pest management. OPM responds that it allows for continuing education in integrated pest management, but is not going to mandate it.

**Termite inspections**

One writer opposed allowing home inspectors to perform wood-destroying insect inspections without a business license and qualifying party. Another writer opposed home inspectors performing termite inspections without an OPM license. Another writer wanted termite inspectors to be licensed in both inspections and treatments. Another writer felt that a person should not need an applicator's license to only inspect for termites. OPM responds that this rulemaking requires that termite inspections be performed by licensed applicators working for a business license and under the supervision of a qualifying party, but does not require a person who only performs inspections to also be licensed to perform treatments.

**Miscellaneous**

Two commenters expressed satisfaction with the overall direction of the rules.

One commenter submitted several comments on the proposed rules. The commenter questioned the definitions of control, pesticide, and specimen label, recommended including vertebrate pests under the right-of-way category, recommended making the penalty for failing to register an applicator discretionary, asked for clarification about the definition of work in rule 201(A), recommended rephrasing rule 209 to say "if a business wants to change its name" instead of "if a business licensee changes the name," recommended keeping the portion of rule 301(F) that the Task Force proposal had stricken, recommended changing the reference in rule 302(C) from label to specimen label, recommended rephrasing the requirement to lock pesticides on a vehicle, and recommended allowing herbicides to be reported in terms of quantity as opposed to percent of active ingredient. The commenter also opined that the record-keeping requirements for small businesses are very burdensome, but did not provide any suggestions for lessening the burden. The commenter also thought that hardware cloth for roof rat control would not require regulation. OPM responds that the final Task Force recommendation and this rulemaking modify the definition of specimen label, change the reference in rule 302(C) from label to specimen label, rephrase the requirement to lock pesticides on a vehicle, note several devices that can be used without a license, and modify the right-of-way category to allow treatment of vertebrate pests. This rulemaking also returns the language in rule 301(F) that had been stricken in the Task Force recommendation and broadens how the amount of pesticide applied can be reported. OPM determined that penalties for failing to register an applicator—which must be done before the applicator begins working—should be mandatory. OPM also believes the word "work" is clear and that replacing the three instances of "work" in subsection (A) with "performing pest management services" or similar would be unnecessarily wordy.

Three commenters submitted identical letters in favor of expanding the aquatic category to cover mosquito larvae and temporary water in retention basins. The final Task Force recommendation and this rulemaking do expand the aquatic category as suggested.

One commenter wrote about concerns over the wood preservation category applying to structures. OPM responds that the wood preservation category does not apply to structures.

One commenter questioned the proposed rule that does not require licensure if the person only uses exempt devices. OPM responds that the use of certain devices should not require licensure and that the industry has run into controversy in the past by trying to require people to get licensed who only used certain devices.

One commenter favored the TARF over 1080 forms, thought that people using restricted use pesticides should have a bachelor's degree and noted that the industry requires regulation because applicators go into homes and schools. OPM responds that this rulemaking does not require a bachelor's degree to use restricted use pesticides, and OPM does not believe such a require is necessary or would be supported.

One writer expressed opposition to the landscaper exemption to licensure because of concern landscapers are not following the instructions on the label. OPM responds that the landscaper exemption is governed by statute.



**Notices of Exempt Rulemaking**

One submission illustrated potential annual licensing fee increases for five unnamed landscaping companies. In the illustration, the annual licensing fees for four of the companies would approximately double and the fifth would be more than 11 times greater under the fee structure included in this rulemaking. OPM responds that it does not know how accurate these estimates are without more details and particularly questions the representation that one company's fees would increase 11 fold. OPM also responds that the Task Force and many commenters recommended shifting the fee burden from the termite industry to a more equitable distribution across all pest control companies through increased licensing fees, which is what this rulemaking accomplishes.

One writer thought that there should not be a limit on how long an unlicensed applicator can continue to work and that the QP exam should include questions on business and contract law. OPM responds that not placing a limit on how long an unlicensed applicator could work would effectively eliminate the licensure requirement, something that is not supported by OPM or the industry. OPM's laws do not require a QP to know business and contract law, so OPM does not test those areas of law.

One member of the public provided several written comments about the proposed OPM statutes and rules. These comments have been combined here.

The commenter believed the Task Force failed to show harm to the public justifying the proposed rules. The commenter found problematic that the changes do not alter the fundamental structure, a structure which the commenter said represents an unjustifiable barrier to entry, supports protectionisms for existing companies, prevents competition, drives qualified people from the industry and hurts consumers. The commenter said that the Task Force is adding complexity and unreasonable regulation, which will result in hundreds (or more) people not cooperating. OPM responds that it disagrees with these general assertions and will respond more specifically to specific points. OPM does point out that throughout this Preamble are examples of how this rulemaking reduces barriers to entry, changes the funding structure of the agency, and decreases regulation.

The commenter expressed concern that adding a groundwater protection list requirement on the industry may adversely affect pesticide registration and pesticide availability because the data could falsely indicate higher potential harm due to significant under reporting and would impose a reporting burden on the industry due to the number of separate applications businesses perform. The commenter pointed out that the list is meant for crop production, which covers large acreage, and that structural pest control rarely involves large acreage. The commenter also stated that homeowners can apply the same type of pesticides without reporting. OPM responds that representatives of Agriculture on the Task Force who have experience in groundwater protection list reporting believe the opposite is true—that is more data has helped show that pesticides are not as big of a problem. OPM does recognize that this requirement will add a reporting burden on affected industry members, but recognizes that this new requirement was an important consideration of the agriculture industry in supporting the new structure where OPM exists side-by-side with the Department of Agriculture.

The commenter opposed a QP requirement where unrestricted pesticides are used and opposes arbitrary experience requirements for QPs. The commenter desired no experience requirement for QPs, just comprehensive testing to determine qualifications. The commenter also felt that QPs have no authority even though they have responsibility under the laws. The commenter explained that a QP is just an employee and that financial responsibility for actions should be placed only on the business and not on a QP. The commenter thought it was a problem that the QP is not required to visit branch offices and that there is no restriction on the number of people a QP can supervise; the commenter suggested that every office have a QP and that the QP be limited to supervising 10 people. The commenter also believed that every branch office should have a responsible person who is responsible for the goings on at the branch. The commenter believed that a QP could satisfy its duty of visiting the main office at least monthly by walking in the front door and right out the back door and that such a system does not improve industry standards. The commenter believed that the QP does nothing to protect consumers. The commenter also pointed out that extra regulations are needed to deal with when a QP stops working for a business for any reason. The commenter stated that the proposed requirement of two years of licensure before a person can become a QP is arbitrary and should be eliminated in favor of just testing. The commenter stated that a QP is not needed because applicators have enough knowledge and are required by law to follow the pesticide label. The commenter also stated that QPs are ineffective because they don't go into the field and check on applicators' work and they cannot overcome business cost cutting decisions. The commenter explained that only a designated responsible contact person is necessary. The commenter stated that businesses should always be financially responsible for its applicators and should be responsible for supervising its employees and hiring qualified supervisors, but that businesses should not use their supervisors as scapegoats. The commenter felt that if a manager does not perform his job properly, the business should be liable instead of the manager because the business is in charge of the manager, though the commenter also felt that an applicator should be liable if the applicator does not perform his job properly (even though the business is also in charge of the applicator). The commenter expressed that a business has a vested interest in making sure the supervisor is qualified, so the business should be able to take the risk of hiring whoever they want (regardless of applicator licensure) to supervise. The commenter also believed that certain industry members only want to keep the QP as a barrier to entry to others who might want to get into the business. The commenter pointed out that some western states do not have a QP requirement. The commenter also pointed out that agriculture commercial applicators seem to function fine without a QP.

OPM responds that it and many in the industry see value in the QP. OPM points out that the requirement to be at the main office at least once every 30 days was a minimum requirement and not the only requirement of a QP. It has not

**Notices of Exempt Rulemaking**

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been and will not be enough for a QP to walk in the front door and out the back and call it good. The final Task Force recommendation and this rulemaking require a QP to be at the main office every 14 days and at branch offices every 120 days. They also require branch supervisors at every branch who work out of those branches. The final Task Force recommendation and this rulemaking also make significant changes that remove or lessen barriers to entries for new QPs and for QPs who wish to broaden. OPM also points out that businesses are financially responsible for their applicators, both under existing law and under this rulemaking; QPs are also responsible when the QP's failure to carry out its responsibilities contributes to a problem. OPM also responds that the commenter's recommendation of dropping the qualifying party requirement and instead having more comprehensive testing to ensure applicators are qualified would have negative consequences the commenter has not addressed. For example, the qualifying party exam is already more difficult than the applicator exam, yet it takes the average person about 1.8 tries to pass the easier applicator exam and a passing score is a mere 75% correct. If OPM made the applicator test more difficult, it would create a barrier to entry, which runs counter to the commenter's goals. If OPM did not make the test more difficult, then an applicator who scored only 75% on the easier test could apply pesticides for others without supervision. The Task Force found and OPM agrees that a QP should have some experience and that the book smarts required to pass the examination should not be the only qualification for licensure. While there are diverse opinions on how much experience is necessary, there is general acceptance of the two year licensure requirement included in the final Task Force recommendation and this rulemaking.

The commenter thought it was a problem that the Task Force did not differentiate between restricted and unrestricted pesticides, including the difference in harm. The commenter said that homeowners and gardeners use unrestricted pesticides without regulation and without significant harm. The commenter said that the EPA and some other states do not require a QP for unrestricted pesticide use. The commenter agreed with requiring a QP for restricted pesticide use. OPM responds that it believes there is a difference between a person doing a job themselves and a person hiring a company to do that same job and that this difference justifies regulation of the company. For example, companies are required to have insurance and keep records in addition to having a qualifying party (to name a few things), which are all things a homeowner is not required to do.

The commenter stated that the way to improve standards is through improved education and improved testing so that certified applicators have a substantial knowledge base. The commenter recommended detailed study materials similar to the Department of Agriculture's study materials. The commenter also felt that raising testing requirements for applicators will serve the industry and the public without creating a barrier to entry. OPM agrees that improved education and improved testing is important. OPM also plans to improve the study materials and tests, though these are not rulemaking issues. OPM disagrees with the claim that raising the testing standards will not create a barrier to entry; if the test standards are increased, less people are likely to pass the applicator exam.

The commenter desired to abolish the TARF system, including the TARF database. The commenter also suggested lowering the TARF fee to reduce the percentage of OPM's revenue coming from the TARF and raise licensing fees to make up the difference. The commenter also suggested charging people to retrieve data from the TARF database. The commenter felt that the TARF database does not provide consumer protection, allows for data mining of people who have had termite treatments, provides business information to competitors, and is incomplete. The commenter also felt that there should not be a fear of the Legislature when it comes to dropping the TARF database and that the Legislature could be educated about the lack of need for the database. The commenter also felt that there is not the same need to track what termiticides are used today as there was many years ago because of advances in technology and safety of the product. OPM responds that there was a range of opinions on the value of the TARF database and whether to keep it. The Task Force recommendation was to keep the TARF database with a lower cost and with less information required in TARF reports. The TARF fee is dropping by 75% and licensing fees are going up to make up the difference.

The commenter thought that the weed exemption should be expanded for landscapers and should cover licensed pest control companies that lack a weed license. OPM responds that the landscaper exemption is set out in statute and that this rulemaking does not expand the landscaper exemption to licensed business not licensed in the weeds category. Nevertheless, the final Task Force recommendation and this rulemaking adjust the certification categories so that certain weed control can be done by those licensed in the ornamental and turf category.

The commenter thought that a five year termite warranty requirement for a treatment that lasts two years is too much. OPM responds that the final Task Force recommendation and this rulemaking reduce the warranty from five years to three years.

The commenter believed that there is no legitimate need for registration of applicators. The commenter also recommended getting rid of the provision that allows a new applicator to apply pesticides for up to 90 days before becoming certified. OPM responds that the registration of applicators serves two important purposes. For one, it allows OPM to accurately spread licensing fees out based on the number of applicators a business has. For another, it should eliminate the problem of businesses claiming that an applicator is within the 90 day grace period when the applicator is not. OPM also recognizes that there was some diversity of opinion on whether the 90 day grace period should be kept, but that ultimately the Task Force decided to allow this ingrained industry practice to continue.

The commenter felt that requiring licensees to record EPA registration numbers for unrestricted pesticides on service records serves no purpose and is useless overhead that burdens small business. OPM understands that the commenter does not presently record the EPA registration number on service records, but does not believe recording this number

**Notices of Exempt Rulemaking**

adds a significant burden. OPM also believes that the registration number provides an easy and accurate way to quickly look up the SDS and labeling for a pesticide.

The commenter recommended getting rid of the right-of-way category and allowing other existing categories to encompass right-of-ways, such as the weed and general pest categories. The commenter believed that the pests, pesticides, and techniques are the same. OPM responds that the weed category will be eliminated and will now be covered primarily by the ornamental and turf and right-of-way categories. OPM also points out that right-of-way is a category under federal law as well.

The commenter stated that OPM should not regulate any devices, just pesticides. OPM responds that there was a diversity of opinion on the regulation of devices, with some people wanting all devices regulated and others wanting no devices regulated. The final Task Force recommendation and this rulemaking take a middle approach by identifying specific devices that do not require a license and by leaving open the possibility of identifying more such devices in the future.

OPM was presented with the results of two surveys. In the first survey, among the survey respondents, 86.9% (126) supported keeping the TARF with a reduced fee, 61.1% (80) felt that \$4 was an appropriate TARF fee, 71% (103) reported that they or their customers used the TARF database, 73.1% (98) found the TARF database useful, 83.1% (118) opposed eliminating TARFs and the TARF database, 75.5% (114) supported keeping the QP requirement but with only two years of experience, 81.3% (122) supported the proposal to eliminate the experience requirement to broaden a QP license in certain circumstances, 89% (137) opposed eliminating the QP requirement completely, and 85.7% (132) opposed eliminating the QP requirement for unrestricted pesticide use.

In the second survey, 52% (25) had contacted the Task Force to voice their opinions, 65% (31) supported using the NASDA National Pesticide Applicator Certification CORE Manual, 81% (39) felt that use of restricted pesticides should require more regulatory oversight than unrestricted pesticides, 56% (27) reported never or rarely using restricted use pesticides, 69% (33) opposed eliminating the QP requirement for use of unrestricted pesticides, 75% (36) thought that a QP should show up on a regular basis rather than just once a month, 56% (27) opposed requiring each branch office to have a QP, 60% (24) thought that QP qualifications should include at least two of field experience, testing, and waiting a minimum period after taking the test, 60% (28-29) have used the TARF database, with many of those looking up customer warranty information or supporting real estate transactions, 50% (24) supported the TARF system and 50% (24) did not, 71% (34) opposed expanding the landscaper exemption to licensed pest control businesses, 88% (42) thought the State should require background checks for applicators, and 65% (31) thought that devices such as screening, netting, bird barbs, traps, lice combs, and hair dryers should not be regulated.

The Task Force received a petition to abolish the TARF database. The petition was signed by 36 licensees and 40 non-licensees, including 5 from out-of-state. The petition cited eight reasons. One, the database is missing information about what pesticides have been applied to a home because only certain applications require reporting. Two, the TARF fee is the primary funding mechanism for the OPM and the cost of regulation should be spread out among all pest control companies instead. Three, the database can be used to mine data for marketing purposes. Four, the database can be used to perform "drive-by" termite inspections. Five, the database can be used by larger companies to bring enforcement actions against smaller companies. Six, the TARF increases the cost to consumers and is disproportionately more expensive for small companies. Seven, fear of the Legislature is not a valid reason to keep the system. Eight, there has not been any documented harm from termiticide use in the last three years.

The Task Force received a petition to keep the landscaper exemption and expand it to licensed pest control applicators who are not licensed in the weed category. The petition also recommended changing the maximum application under the exemption from gallons to square feet. The petition was signed by 32 licensees and 25 non-licensees, including 2 from out-of-state.

The Task Force received a petition to eliminate the experience requirement to become a QP. The petition was signed by 44 licensees and 37 non-licensees, including 5 from out-of-state. The petition said 3000 hours of experience is too much. The petition also noted the difficulty in expanding a QP license into new categories, particularly if the company owner and QP are the same person. The petition complained that experience in another state doesn't count. The petition also said that women have trouble getting hired and obtaining the necessary experience. The petition recommended comprehensive testing as the only requirement to become a QP.

The Task Force received a petition to stop requiring a QP with respect to unrestricted pesticides. The petition was signed by 30 licensees and 34 non-licensees, including 4 from out-of-state. The petition cited five reasons. One, homeowners and exempt landscapers can use the same pesticides and there have been no reports of significant harm from that use. Two, applicators are licensed, which requires demonstration of knowledge and continuing education. Three, a QP serves no purpose with respect to unrestricted pesticides. Four, agriculture does not require a pest control advisor to use unrestricted pesticides. Five, the QP is a barrier to entry because of the 3000 hour requirement.

OPM responds that the two surveys and four petitions show a diversity of opinion on the covered topics, which diversity was also expressed during the Task Force meetings. OPM believes the final Task Force recommendation and this rulemaking reflect the majority view on most if not all of these topics, which includes keeping the TARF, but at a significantly reduced fee with the lost revenue being recaptured through higher licensing fees, keeping the QP and requiring some experience (two years), but not 3000 hours, to become a QP while allowing a QP to broaden into some other categories without any additional experience, requiring the QP to visit the main office more than monthly

Notices of Exempt Rulemaking

(every 14 days), not expanding the landscaper exemption to licensed business not licensed in the weeds category, yet adjusting the categories so that weed control can be done by those licensed in the ornamental and turf category, and not requiring licensure for certain devices. So, even though some of the changes do not go far enough in some people's eyes, the changes do address many specific areas of past concern.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**

None other than noted under a and b of this item.

**a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

This rulemaking requires a permit for pesticide applicators, qualifying parties, businesses engaged in pest management, branch offices, and branch supervisors. The permits for businesses, branch offices, and branch supervisors are general permits. The permits for pesticide applicators and qualifying parties are not general permits, but are granted by pesticide category according to examinations passed by the individuals. Federal law (40 CFR 171.4) requires pesticide applicators to pass category specific examinations. Therefore, OPM cannot issue a permit to a pesticide applicator for all categories unless the applicator passes every category specific examination. In addition, there is a fee for each category examination and, under a general permit, applicators would be required to pay the fee for every examination even if the applicators do not desire to go into business in every category. Permits for qualifying parties are tied to the categories in which the person has applicator certification, which is why a general permit is not feasible for qualifying parties either.

**b. Whether a federal law is applicable to the subject of the rules, whether the rules are more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Some of the rules in this rulemaking relate to the certification of pesticide applicators and may be more stringent than 40 CFR 171, which also relates to the certification of pesticide applicators. A.R.S. § 32-2304(A)(1) specifically allows the rules to be more stringent than federal law.

**c. Whether a person submitted an analysis to the agency that compares the impact of the rules on the competitiveness of business in this state to the impact on business in other states:**

No

**13. A list of any incorporated by reference material and its location in the rules:**

None

**14. Whether the rules were previously made, amended, repealed or renumbered as emergency rules. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**

No

**15. The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. OFFICE OF PEST MANAGEMENT

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

Section

R4-29-101.	Definitions
R4-29-102.	<del>License Categories and Certification Categories; Scope of Work</del>
<del>R4-29-103.</del>	<del>Complaint Information Repealed</del>
<del>R4-29-105.</del>	<del>R4-29-103. Fees; Charges; Exemption</del>
<del>R4-29-104.</del>	<del>Providing Information to the Commission Repealed</del>
R4-29-104.	Pest Management Advisory Committee
R4-29-105.	Renumbered
R4-29-106.	Renumbered
R4-29-107.	Licensing Time-frames
Table 1.	Time-frames (Calendar Days)

Notices of Exempt Rulemaking

**ARTICLE 2. ~~OBTAINING, RENEWING, ACTIVATING OR INACTIVATING A LICENSE; EXAMINATION; CONTINUING EDUCATION REQUIREMENT; APPROVAL OF CERTIFICATION, REGISTRATION AND LICENSURE~~; CONTINUING EDUCATION**

Section

- R4-29-201. Activities that Require a License; ~~General Provisions~~ Exemptions  
R4-29-202. ~~License Exemptions; Unlicensed Persons~~ Repealed  
R4-29-206-R4-29-202. ~~Obtaining a Business License~~  
R4-29-203. ~~Obtaining an Applicator License~~ Certification  
R4-29-204. ~~Obtaining a Qualifying Party License~~ Qualified Applicator Certification  
R4-29-205. Qualifying Party Registration; Temporary Qualifying Party Registration  
R4-29-213-R4-29-206. ~~Branch Office Registration; Branch Supervisor Registration~~  
R4-29-207. ~~Renewing an Applicator, Qualifying Party, or Business License~~ Repealed  
R4-29-207. Applicator Registration  
R4-29-208. ~~Obtaining a Temporary Qualifying Party License~~ Repealed  
R4-29-208. License, Certification and Registration Renewal  
R4-29-214-R4-29-209. ~~Change in a Business Licensee~~  
R4-29-210. ~~Inactivating or Activating an Applicator License~~ Repealed  
R4-29-212-R4-29-210. ~~Certification Broadening an Applicator or Qualifying Party License~~  
R4-29-211. ~~Inactivating or Activating a Qualifying Party License~~ Repealed  
R4-29-205-R4-29-211. ~~Licensing Certification Examination for an Applicator or Qualifying Party Applicant~~  
R4-29-212. Reciprocity  
R4-29-213. Political Subdivision Responsible Individual  
R4-29-214. Renumbered  
R4-29-215. ~~Continuing Education Requirement for an Applicator or Qualifying Party~~  
R4-29-216. ~~Requirements for Approval of Continuing Education~~ Approval

**ARTICLE 3. ~~APPLICATOR DUTIES AND RESPONSIBILITIES~~ PEST MANAGEMENT**

Section

- R4-29-304-R4-29-301. ~~Using Pesticides and Devices~~  
R4-29-306-R4-29-302. ~~Storing and Disposing of Pesticides and Devices~~  
R4-29-606-R4-29-303. ~~Storing Pesticides and Devices~~ Pesticide and Device Storage Area  
R4-29-304. Devices Exempt From Licensure and Registration; Advertising  
R4-29-607-R4-29-305. ~~Equipping a Service Vehicle~~  
R4-29-302-R4-29-306. ~~Providing Notice to Customers~~  
R4-29-303-R4-29-307. ~~Performing a Wood-destroying Insect Inspection; WDIIRs~~  
R4-29-305-R4-29-308. ~~Performing Wood-destroying Insect Control~~ Management  
R4-29-608-R4-29-309. ~~Providing Termite Treatment~~ Warranties and Retreatments  
R4-29-605-R4-29-310. ~~Business Management~~

**ARTICLE 4. SUPERVISION**

Section

- R4-29-502-R4-29-401. ~~Supervising an Applicator~~  
R4-29-503-R4-29-402. ~~Qualifying a Business Licensee~~ or School District  
R4-29-504-R4-29-403. ~~Qualifying Party Management~~  
R4-29-404. Branch Supervisors  
R4-29-603-R4-29-405. ~~Supervision of Qualifying Party~~  
R4-29-406. Responsible Individuals  
R4-29-106-R4-29-407. ~~Joint Responsibility~~

**ARTICLE 5. ~~QUALIFYING PARTY DUTIES AND RESPONSIBILITIES~~ RECORDKEEPING AND REPORTING**

Section

- R4-29-501. ~~Compliance with Applicator Duties and Responsibilities~~ Repealed  
R4-29-307-R4-29-501. ~~Applicator Recordkeeping~~  
R4-29-505-R4-29-502. ~~Qualifying Party Recordkeeping~~  
R4-29-609-R4-29-503. ~~Business Licensee and Political Subdivision~~ Recordkeeping and Retention  
R4-29-504. Reporting Incidents and Bulk Releases  
R4-29-505. Groundwater Protection List Reporting

Notices of Exempt Rulemaking

~~ARTICLE 6. BUSINESS LICENSEE DUTIES AND RESPONSIBILITIES~~

**ARTICLE 7. 6. INSPECTIONS; INVESTIGATIONS; COMPLAINTS; DISCIPLINARY PROCEDURES**

Section

- ~~R4-29-601. Compliance with Applicator Duties and Responsibilities Repealed~~  
~~R4-29-601. Inspection of Licensee Records~~  
~~R4-29-301. R4-29-602. Compliance with Commission OPM Monitoring~~  
~~R4-29-603. Corrective Work Orders~~  
~~R4-29-604. Qualifying Party Required Repealed~~  
~~R4-29-708. R4-29-604. Disciplinary Action~~  
~~R4-29-704. R4-29-605. Consent Agreements~~  
~~R4-29-606. Penalties~~  
~~R4-29-607. Renumbered~~  
~~R4-29-608. Renumbered~~  
~~R4-29-609. Renumbered~~

**ARTICLE 7. RENUMBERED**

Section

- ~~R4-29-701. General Provisions Repealed~~  
~~R4-29-702. Inspections, Investigations, and Complaints Repealed~~  
~~R4-29-703. Settlement Conferences Repealed~~  
~~R4-29-704. Renumbered~~  
~~R4-29-705. Hearing Procedures Repealed~~  
~~R4-29-706. Review or Rehearing of a Commission Decision Repealed~~  
~~R4-29-707. Judicial Review of Commission Order Repealed~~  
~~R4-29-708. Renumbered~~

**ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS**

**R4-29-101. Definitions**

~~In addition to the definitions provided in A.R.S. § 32-2301 et seq. 32-2301, the following terms apply to this Chapter. Additionally, in this Chapter:~~

~~“Administratively complete” means an application contains all components required by statute or this Chapter to be submitted to the Commission OPM to enable the Commission OPM to determine whether to grant a license or approval.~~

~~“Advertisement” means a written or oral notice, including a business card, website, or telephone directory listing, which is intended, directly or indirectly, to induce a person to enter into an agreement for pest management services.~~

~~“Applicant” means:~~

~~An individual requesting an initial or renewal applicator, temporary qualifying party, or qualifying party license;~~

~~One of the following if requesting an initial or renewal business license:~~

~~An individual, for a sole proprietorship;~~

~~An officer, for a corporation;~~

~~The managing or general partner, for a partnership or limited liability partnership;~~

~~The manager or two members, for a limited liability company or professional liability company; or~~

~~A designated agent of a state agency or political subdivision or appointed or elected individual or body, an appointed or elected individual, or a member of an appointed or elected body; or~~

~~An individual or entity requesting approval of a continuing education course.~~

~~“Applicator” means an individual licensed by the Commission as qualified to provide who provides pest management services when working under both a qualifying party and business license. Applicator does not include a laborer.~~

~~“Applicator certification” means a certified applicator license.~~

~~“Before construction treatment,” as used in the Commission’s statutes, means pretreatment.~~

~~“Broadening” means to add another category of work to an existing license certification.~~

~~“Continuing education” means a planned course or program that the Commission approves under R4-29-216.~~

~~“Certified applicator” means an individual who is licensed by the OPM to provide pest management services, including a QA.~~

~~“CEU” means continuing education unit.~~

Notices of Exempt Rulemaking

“Continuing education unit” means ~~60~~ 50 minutes of participation in continuing education.

“Control” ~~means~~ or “manage” means, with respect to pests, to exterminate, eradicate, destroy, kill, repel, attract, sterilize, mitigate, remove, or a combination of these activities.

“De minimis violation” has the same meaning as prescribed in A.R.S. § 32-2301 and means an act or omission by a licensee for which the Commission provides an opportunity to correct the act or omission informally rather than filing a complaint against the licensee.

“Department” means the Arizona Department of Agriculture.

“Disassociate” means to die, become ~~ill or~~ disabled, resign, retire, be ill or take leave for more than 14 days, be terminated, or be called to active military duty.

“~~During construction treatment,~~” as used in the Commission’s statutes, means new construction treatment.

“Entire structure” means all critical areas as defined in this Chapter and as specified on product labeling for both the interior and exterior of a structure.

“EPA” means the U.S. Environmental Protection Agency.

“EPA registration number” means the actual EPA registration number of a product or the federal provision exempting the product from EPA registration.

“~~Final grade~~ Final grade treatment” means ~~to establish establishment of a complete vertical barriers barrier at the exterior of foundation walls in stem-wall stem wall or monolithic construction or at the exterior of grade beams in monolithic construction.~~

“Fog or fogging” means applying a pesticide by a flammable, aerosolizing thermal or other generator that forms particles less than 10 microns in diameter.

“Food-handling establishment” means a place, other than a private residence, in which food is received, served, stored, packaged, prepared, or processed.

“Fumigant” means a chemical substance with a vapor pressure greater than five millimeters of mercury at 25 degrees Centigrade that is used to destroy plant or animal life.

“Fumigation” means a method of pest management that completely fills an area with a fumigant to suffocate or poison pests within the area.

“Fungi” means saprophytic and parasitic organisms that lack chlorophyll such as molds, rusts, mildews, smuts, and yeast, except those on or in living people or animals or processed foods, beverages, or pharmaceuticals.

“Fungi inspection report” means the document authorized by A.R.S. § 32-2324.01 and prepared in connection with the sale or refinancing of real property regardless of whether the report is used as part of the sale or refinancing.

“~~Inquiry~~” means ~~a threshold investigation by the Commission to determine whether the Commission has jurisdiction in a matter and if so, the likelihood that there has been a violation of the Commission’s statutes or this Chapter or misuse of a pesticide.~~

“Health care institution” means a health care institution licensed pursuant to Title 36, Chapter 4 and includes doctor and dental offices.

“Label” means a written, printed, or graphic document that is approved by the EPA and on or attached to a pesticide container, the wrapper of a pesticide container, or a device.

“Labeling” means a written, printed, or graphic document that is authorized by the manufacturer or a state or federal agency to accompany a pesticide or device, or is referred to on the label or in literature accompanying the pesticide or device.

“~~Late~~” means ~~a document required to be submitted to the Commission is post-marked after the date the document is due or is not received by the Commission.~~

“~~Liability insurance,~~” as used in A.R.S. § 32-2313, means ~~insurance that protects the business licensee named in the insurance policy and any person working with the express or implied permission of the named business licensee, against loss from legal liability for bodily injury or property damage as a result of the named business licensee providing pest management services.~~

“~~Manner inconsistent with the label~~” means ~~the use of a pesticide in a manner not permitted by the label or labeling.~~

“Laborer” means an individual who performs physical labor necessary for an applicator to provide pest management services, including drilling and trenching, but who does not handle any pesticide container that has ever been opened, identify infestations, make inspections, make inspection reports or recommendations with respect to infestations, or use any device for the purpose of eliminating, exterminating, controlling or preventing infestations, except that laborer includes an individual who assists with the use of a tarp on a structure for a fumigation performed by an applicator.

“~~MSDS~~” means ~~material safety data sheet, which is a written communication regarding a hazardous chemical that meets~~

Notices of Exempt Rulemaking

~~the standards at 29 CFR 1910.1200(g).~~

~~“New-construction treatment” means a termite treatment that complies with standards in the Commission’s statutes and this Chapter, protects to all cellulose components of a structure as prescribed by the pesticide label to protect the structure from subterranean termites, termites and is performed after a permanent concrete slab foundation is installed or after footings and supports for a raised foundation are installed installed, but before the structure or a final grade treatment is completed.~~

~~“Next business day,” as used in A.R.S. § 32-2323(G), means the first day after the 30th calendar day that is not a Saturday, Sunday, or state holiday.~~

~~“Non-food area of a food-handling establishment” means a lavatory, floor drain, entrance or vestibule, office, garage, mop closet, can or bottle storage, or garbage, locker, machine, or boiler room.~~

~~“Of employment,” as used in A.R.S. § 32-2312(E), means the date on which an employee of a business licensee first applies a pesticide within the scope of employment by the business licensee.~~

~~“OPM” means the Office of Pest Management.~~

~~“Other equivalent item,” as used in A.R.S. § 32-2313(H) regarding financial responsibility, means an irrevocable and unconditional letter of credit, from an Arizona-chartered or federally chartered financial institution, that is filed with the Commission.~~

~~“Party” has the same meaning as prescribed in A.R.S. § 41-1001.~~

~~“Person” means an individual, sole proprietorship, corporation, limited liability corporation, partnership, association, governmental subdivision or unit of a governmental subdivision, public or private organization, or governmental agency.~~

~~“Pest” means a vertebrate or invertebrate insect, bird, mammal, or other animal or organism, or a weed or plant pathogen that is in an undesirable location.~~

~~“Pesticide,” as defined in A.R.S. § 32-2301, includes but is not limited to an insecticide, fungicide, rodenticide, termiticide, fumigant, larvicide, piscicide, adulticide, herbicide, nematocide, avicide, or molluscicide.~~

~~“Pest management services” means the tasks that comprise the business of structural pest control or structural pest control as defined in A.R.S. § 32-2301 identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations, making written or oral inspection reports or recommendations with respect to infestations, and the application of pesticides or the use of devices not exempt by section 32-2304, subsection B, paragraph 18, for the purpose of eliminating, exterminating, controlling or preventing infestations.~~

~~“Post-construction treatment” means a treatment that complies with standards in the Commission’s statutes and this Chapter to control subterranean termites or other wood-destroying insects in or around an existing structure, and is structure performed after all soil disturbance associated with construction is complete and after an applicator has completed an inspection of the structure and a treatment proposal under A.R.S. § 32-2323(A) 32-2332(A) and (B).~~

~~“Practical experience,” as used in A.R.S. § 32-2314, means field work, research, training, teaching, or supervision relevant to pest management services regardless of whether compensation is received, and coursework as required by the Commission’s statutes.~~

~~“Pretreatment” means a termite treatment that complies with standards in the Commission’s statutes and this Chapter, protects all cellulose components of a structure from subterranean termites, is performed before a permanent concrete slab foundation is installed or in conjunction with establishing footings and supports for a raised foundation, and establishes thorough and complete horizontal and vertical treated barriers.~~

~~“Primary service,” as used in A.R.S. § 32-2311(A)(6)(c) 32-2311.02(B)(3), means applying an herbicide as the only or predominant service under a verbal or written contract to maintain a property.~~

~~“Prior to construction,” as used in the Commission’s statutes, means pretreatment.~~

~~“Prior violation of the same type” means failure to comply with a statute or rule regarding use of a pesticide, failure to comply with a statute or rule not regarding the use of a pesticide, failure to comply with a Commission order, or engaging in unlicensed activity, for which disciplinary action was taken within the five years preceding similar conduct for which current disciplinary action is sought.~~

~~“Project” means an individual address or a privately owned or individually owned dwelling.~~

~~“Public liability,” as used in A.R.S. § 32-2313, means protection against legal liability for the death, injury, or disability of any human being.~~

~~“QA” means certified qualified applicator.~~

~~“QP” means qualifying party.~~

~~“Qualified applicator certification” means a certified qualified applicator license.~~

~~“Repeated de minimis violations,” as used in A.R.S. § 32-2321, means at least three similar violations of statute or rule by~~



Notices of Exempt Rulemaking

~~the same licensee within five years.~~

“SDS” means safety data sheet, which is a written communication regarding a hazardous chemical that meets the standards at 29 CFR 1910.1200(g).

~~“Service container” means a receptacle, other than the originally labeled receptacle provided by the manufacturer, that is used to hold, store, or transport a pesticide concentrate or use-dilution preparation other than the original labeled receptacle provided by the manufacturer, a measuring instrument, or application equipment.~~

~~“Service vehicle” means a motor vehicle, including a trailer attached to the motor vehicle, used regularly to transport a licensee an applicator and equipment or pesticides used to provide pest management services.~~

~~“Signal word” means a word printed on a label that indicates the toxicity level of the pesticide in the container to which the label is affixed.~~

~~“Special Local Need registration” means an authorization from the Arizona Department of Agriculture to use a pesticide, which meets an Arizona-specific need, in Arizona according to the terms of the registration.~~

~~“Specimen label” means a label other than the label attached to a pesticide container that contains the same information as the label attached to the pesticide container labeling.~~

~~“Sterilant,” as used in A.R.S. § 32-2311(A)(6)(b), means a product that may prevent vegetation growth for 12 or more months.~~

~~“Structure” means all parts of a building, whether vacant or occupied, in all stages of construction.~~

~~“Subterranean termites” means the several species of termites that usually maintain contact with the soil, including those in the families Rhinotermitidae and Termitidae.~~

~~“Supplemental wood-destroying insect inspection” means a re-examination made by an applicator of the business licensee that conducted a previous wood-destroying insect inspection and within 30 days of the previous examination to determine whether corrective treatment has been performed or conditions conducive to wood-destroying insects have been corrected.~~

~~“Tag” means a written document that is required under this Chapter to be posted conspicuously at a pretreatment or new-construction treatment site.~~

~~“TARF” means termite action report form.~~

~~“Temporary qualifying party” means an individual who is licensed by the Commission under R4-29-208 for a limited time to ensure the training, supervision, and equipping of a business licensee’s applicators after the business licensee’s qualifying party disassociates from the business.~~

~~“Termiticide” means a chemical registered by the EPA and the Arizona Department of Agriculture and used for control of termites.~~

~~“Water-retention basin” means an area to temporarily hold water run-off until the water dissipates.~~

~~“WDIIR” means wood-destroying insect inspection report, which is a written report on a form approved by the Commission OPM that is prepared in connection with the sale or refinancing of real property regardless of whether the report is used as part of the sale or refinancing.~~

~~“Web site” means the Commission’s Internet site at [www.sb.state.az.us](http://www.sb.state.az.us) or a subsequent uniform resource locator.~~

“Wood-destroying insect inspection” means an inspection for the presence or absence of wood-destroying insects.

**R4-29-102. License Categories and Certification Categories; Scope of Work**

For the purpose of this Chapter and A.R.S. § 32-2301 et seq., license categories and the scope of work for each category are as follows:

1. ~~Category B1 (General pest and public health) is limited to controlling general terrestrial vertebrate and invertebrate pests in or about a residential or other structure, public health pests, and pests not included in another license category but does not include pests in forests, aquatic food production, or agricultural plant areas.~~
2. ~~Category B2 (Wood-destroying insect control) is limited to controlling wood-destroying insects in or about a structure by a means other than use of a fumigant.~~
3. ~~Category B3 (Weed and right-of-way control) is limited to controlling terrestrial weeds in all areas other than a forest or agricultural plant or aquatic area.~~
4. ~~Category B4 (Fumigation) is limited to using fumigants.~~
5. ~~Category B5 (Turf and ornamental horticulture) is limited to controlling plant and turf pests, diseases, or viruses and using plant growth regulators on ornamental horticultural plants and turf in all areas other than a forest or agricultural plant area and except by means of a fumigant.~~
6. ~~Category B7 (Fungi inspection) is limited to inspecting a structure for suspected fungi and completing a Commission-approved structural fungi inspection report.~~
7. ~~Category B8 (Wood-destroying insect inspection) is limited to inspecting a structure for the items listed in R4-29-303~~

**Notices of Exempt Rulemaking**

and reporting the results of the inspection on a WDHR.

8. ~~Category B9 (Aquatic) is limited to controlling pests, including weeds, in an aquatic area other than a water retention basin or agricultural or forest area, and except for mosquito control.~~

The name and scope of each certification category are as follows:

1. Industrial and institutional: pest management in or about a residential or other structure excluding anti-microbial pest management, fungi inspection, or pest management covered by another certification category.
2. Wood-destroying organism management.
  - a. Wood-destroying organism treatment: inspecting for the presence or absence of wood-destroying organisms and managing wood-destroying organisms in or about a residential or other structure by a means other than use of a fumigant.
  - b. Wood-destroying insect inspection: inspecting for the presence or absence of wood-destroying insects only and excluding preparing treatment proposals.
3. Ornamental and turf: pest management, including weeds, in the maintenance of ornamental trees, shrubs, flowers, and turf by a means other than use of a fumigant.
4. Right-of-way: pest management of pests, including weeds, in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas.
5. Aquatic: pest management, including weeds, in standing or running water.
6. Fumigation: pest management using fumigants.
7. Wood preservation: application of pesticides directly to structural components of wood or wood products, which are not part of an existing structure normally habitable by persons, to prevent or manage wood degradation by wood-destroying organisms including fungi and bacteria.

**R4-29-103. Complaint Information Repealed**

- ~~A. A person may submit information to the Commission alleging unlicensed activity or misuse of a pesticide or violation of law by a licensee or a person who is not licensed. Information may be submitted in writing by mail, electronic mail, or fax, or orally by telephone or personal appearance.~~
- ~~B. The Commission shall ensure that information regarding the complaint process is available on the Commission's web site.~~
- ~~C. If the Commission determines that the public health may be in danger, the Commission shall refer a complaint or the results of an investigation to the Arizona Department of Health Services, another appropriate health-related agency, or the EPA.~~

**R4-29-105, R4-29-103. Fees; Charges; Exemption**

- ~~A. Under the authority provided by A.R.S. § 32-2317, the Acting Director establishes and shall collect the following fees: A person shall pay the following application and renewal fees for licensure, certification, and registration:~~
  1. ~~For an applicator:~~
    - a. ~~License application, \$30; Applicator certification, \$100.~~
    - b. ~~License Applicator certification broadening application, \$10; \$50.~~
    - e. ~~License renewal application, active or inactive status, online, \$20;~~
    - d. ~~License renewal application, active or inactive status, on paper, \$25; and~~
    - e. ~~Duplicate license, \$10.~~
    - c. ~~QA certification, \$200.~~
    - d. ~~QA certification broadening application, \$100.~~
  2. ~~For a qualifying party:~~
    - a. ~~License application, \$150;~~
    - b. ~~License broadening application, \$50;~~
    - e. ~~License renewal during active status, online, \$120;~~
    - d. ~~License renewal during active status, on paper, \$125;~~
    - e. ~~License renewal during inactive status, online, \$20;~~
    - f. ~~License renewal during inactive status, on paper, \$25;~~
    - g. ~~Change from inactive to active status, \$125;~~
      - a. ~~Registration at same time as application for or renewal of the business license, \$0.~~
      - b. ~~Registration at a different time than application for or renewal of the business license, \$100.~~
      - c. ~~Registration broadening, \$50.~~
    - ~~h. Temporary qualifying party license application, \$25; registration, \$100.~~
    - i. ~~Temporary qualifying party license renewal application, \$25; and~~
    - j. ~~Duplicate license, \$10.~~
  3. ~~For a business:~~
    - a. ~~License application, \$75;~~
    - b. ~~License renewal application, online, \$70;~~
    - e. ~~License renewal application, on paper, \$75;~~

Notices of Exempt Rulemaking

- d. ~~Branch office registration application, \$35;~~
- e. ~~Branch office registration renewal application, \$35; and~~
- f. ~~Duplicate license, \$10;~~
- a. Business license, \$300.
- b. Applicator registration, \$25 per applicator.
- 4. For a branch:
  - a. Branch office registration, \$100 per branch.
  - b. Branch supervisor registration at same time as branch office registration, \$0.
  - c. Branch supervisor registration at a different time than branch office registration, \$50.
- B. In addition to the fees listed in subsection (A), a person shall pay a \$10 handling fee for each application or renewal form not submitted electronically when OPM allows electronic submission.
- ~~B.C.~~ Under the authority provided by A.R.S. § 32-2304(A)(13), the Acting Director establishes and shall collect a penalty that is double the license renewal fee. A person shall pay a late fee equal to half of the renewal fee for any license, certificate, or registration that is not renewed timely. If a business license remains expired for more than 30 days, to renew the license, a person shall also pay an additional late fee of \$15 per month that the license remains expired, not to exceed \$165. The penalty is Late fees are in addition to the license renewal fee.
- D. A business licensee shall pay the following TARF fees:
  - 1. Electronic submissions, \$2;
  - 2. Electronic final grade treatment TARF submissions, \$0;
  - 3. Electronic TARF submissions for a pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure, \$0, if the business licensee:
    - a. Performed the pretreatment or new-construction treatment of the main structure.
    - b. Filed a TARF regarding the pretreatment or new-construction treatment.
    - c. Has the structure under its original pretreatment or new-construction warranty, and
    - d. Treats the abutting addition under the terms of the site warranty;
  - 4. All paper submissions, \$8; and
  - 5. Late fee equal to the original TARF fee for any TARF submission more than 30 days after the due date, except that the late fee for an electronic final grade treatment TARF submission more than 30 days after the due date shall be \$2.
- ~~C.E.~~ If the Acting Director OPM administers the examination required under A.R.S. § 32-2312(C) or 32-2314(C), the Acting Director shall charge \$50 to cover the cost of providing this service a certification examination, an applicant shall pay \$50 to take the examination. If the Acting Director Department enters into a contract with an examination service or testing vendor administers a certification examination, an applicant shall pay to the examination service or testing vendor the examination cost established in the vendor's contract with the OPM.
- D. Under the authority provided by A.R.S. § 32-2304(E), the Acting Director establishes and shall collect a fee of \$8 for each TARF required to be submitted under this Chapter except there is no fee to submit timely a TARF pertaining to a final-grade treatment.
- E. Under the authority provided by A.R.S. § 32-2304(E), the Acting Director establishes and shall collect a penalty of \$8 for a TARF that is filed within 180 days after it is due and a penalty of \$16 for a TARF that is filed more than 180 days after it is due. The penalty is in addition to the TARF filing fee under subsection (D). The penalty in this subsection applies to an untimely TARF pertaining to a final-grade treatment.
- F. Any payment to the Office may be made by cash, credit or debit card, money order, or cashier's, certified, business, or personal check. If payment is made by money order or check, the payer shall make the money order or check payable to the Office of Pest Management. If payment is Payments made by business or personal check, payment is not credited until the check clears the bank. The Office does not prorate fees. Fees are not refundable unless A.R.S. § 41-1077 applies. The Office may refuse all forms of payment other than cash, cashier's check, or money order from a person that issued an insufficient funds payment to the Office.
- G. An employee of the Office or the Arizona Department of Agriculture who applies for or holds a Office-issued license is exempt from the fees in subsections (A) through (C).
- E. OPM employees are exempt from the applicator and examination fees listed in this Section.
- G. An applicant who makes a payment for a fee due under this Section that is rejected by a financial institution will be subject to all of the following:
  - 1. The OPM shall void any approval of the application or renewal.
  - 2. The applicant shall pay any financial institution fee incurred by the OPM.
  - 3. The OPM may require the applicant to pay all fees due using a method other than a personal or business check.
  - 4. An application for renewal will be considered untimely if the substitute payment is not received by the OPM by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- H. The Acting Director shall OPM may reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service. An application for renewal will be considered untimely if the substitute payment is not received by the OPM by the original due date, and the applicant will be subject to a late fee based on the

Notices of Exempt Rulemaking

date of receipt of the substitute payment.

- ~~I.~~ Notwithstanding subsections (A), (D) and (E), for services provided in fiscal year 2011-2012, the Acting Director shall collect the following fees:
- ~~1. For an applicator:~~
    - ~~a. License application, \$75;~~
    - ~~b. License broadening application, \$30; and~~
    - ~~c. License renewal application, active or inactive status, \$50.~~
  - ~~2. For a qualifying party:~~
    - ~~a. License application, \$175;~~
    - ~~b. License broadening application, \$150;~~
    - ~~c. License renewal during active status, \$150;~~
    - ~~d. License renewal during inactive status, \$75;~~
    - ~~e. Change from inactive to active status, \$125;~~
    - ~~f. Temporary qualifying party license application, new or renewal, \$75.~~
  - ~~3. For a business:~~
    - ~~a. License application, \$250;~~
    - ~~b. License renewal application, \$200; and~~
    - ~~c. Branch office registration application, new or renewal, \$75.~~
  - ~~4. For a duplicate license, \$10.~~
  - ~~5. TARP submittal:~~
    - ~~a. Electronic, \$8;~~
    - ~~b. On paper, \$15; and~~
    - ~~c. Penalty, in addition to the regular fee, for a TARP filed more than 30 days after it is due, \$16.~~
- ~~J.~~ In addition to the fees in subsection (I), the Acting Director listed in this Section, the OPM may collect service charges from persons who pay with alternative payment methods, including credit cards, charge cards, debit cards and electronic transfers.

**R4-29-104. Providing Information to the Commission Repealed**

- ~~A.~~ A person that wants the Commission to consider written information at a meeting shall submit the written information by the cut-off date established by the Commission.
- ~~B.~~ An individual who wants to address the Commission may do so by appearing at a Commission meeting and completing a request to speak form.
- ~~C.~~ The Commission shall ensure that Commission meeting dates and the cut-off date for each meeting are available on the Commission's web site.

**R4-29-104. Pest Management Advisory Committee**

- A. A five-member Pest Management Advisory Committee is established to assist and make recommendations to the director regarding the administration and implementation of A.R.S. Title 32, Chapter 22.
- B. The members shall meet the following qualifications:
1. Three members shall be business licensees or qualifying parties and shall each have a minimum of five years of pest management experience. At least one of these three members shall be a business licensee who has five or fewer applicators and at least one of these three members shall be from outside of Maricopa and Pima Counties.
  2. One member shall be a representative of a political subdivision.
  3. One member shall be a public member who does not provide pest management services or work for a business licensee.
- C. Members shall serve three year staggered terms. Members shall not serve consecutive terms, except that a member who is appointed to fill a vacancy may serve the unexpired term that fills the vacancy plus one regular term. A member shall be ineligible for reappointment for three years.
- D. The office of a member shall be deemed vacant under any of the following circumstances:
1. The member no longer satisfies the qualification in subsection (B).
  2. The member is unable to perform the duties of the office.
  3. The absence of the member from three consecutive Committee meetings if the absences have not been excused by the Committee.
- E. The Committee shall annually select a chairman and vice-chairman from among its members.

**R4-29-105. Renumbered**

**R4-29-106. Renumbered**

**R4-29-107. Licensing Time-frames**

- A. Overall time-frame. The ~~Commission~~ OPM shall issue or deny a license within the overall time-frames listed in Table 1. The overall time-frame, which is the total number of days provided for both the administrative completeness and substan-

**Notices of Exempt Rulemaking**

tive review time-frames, begins when the ~~Commission~~ OPM receives an application.

**B. Administrative completeness review time-frame.**

1. During the administrative completeness review time-frame, the ~~Commission~~ OPM shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the ~~Commission~~ OPM shall specify in the notice what information is missing. If the ~~Commission~~ OPM does not provide notice to the applicant within the administrative completeness review time-frame, the ~~Commission~~ OPM shall deem the application complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion request period listed in Table 1. The administrative completeness review and overall time-frames are suspended from the postmark date of the notice of missing information until the date the ~~Commission~~ OPM receives the information.
3. If an applicant fails to submit the missing information before expiration of the completion request period, the ~~Commission~~ OPM shall consider the application withdrawn and close the file. An applicant whose file is closed may apply for a license by submitting a new application and application fee.

**C. Substantive review time-frame.**

1. The substantive review time-frame listed in Table 1 begins when an application is administratively complete or at the end of the administrative completeness review time-frame in Table 1, whichever occurs first. If the ~~Commission~~ OPM determines during the substantive review that additional information is needed, the ~~Commission~~ OPM shall send the applicant a comprehensive written request for additional information.
2. Both the substantive review and overall time-frames are suspended from the date of the ~~Commission's~~ OPM's request until the date that the ~~Commission~~ OPM receives the additional information. The applicant shall submit the additional information within the additional information period listed in Table 1.
3. If the applicant fails to provide the additional information within the additional information period in Table 1, the ~~Commission~~ OPM shall consider the application withdrawn and close the application. An applicant whose file is closed may apply for a license by submitting a new application and application fee.

**D. Within the overall time-frame listed in Table 1, the ~~Commission~~ OPM shall:**

1. Deny a license or approval to an applicant if the ~~Commission~~ OPM determines that the applicant does not meet all the substantive criteria required by the ~~Commission's~~ OPM's statutes and this Chapter; or
2. Grant a license or approval to an applicant if the ~~Commission~~ OPM determines that the applicant meets all the substantive criteria required by the ~~Commission's~~ OPM's statutes and this Chapter.

**E. If the ~~Commission~~ OPM denies a license or approval under subsection (D)(1), the ~~Commission~~ OPM shall provide a written notice of denial to the applicant that explains:**

1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial; and
3. The time for appealing the denial.

**Table 1. Time-frames (Calendar Days)**

<b>Type of License, Registration, Change or Approval License</b>	<b>Applicable Statute or Rule Authority</b>	<b>Administrative Completeness Review</b>	<b>Applicant Response to Completion Request</b>	<b>Substantive Completeness Review</b>	<b>Applicant Response to Additional Information</b>	<b>Overall Time-frame</b>
Applicator	A.R.S. § 32-2312					
New	R4-29-203	30	90	100	<del>180</del> 360	130
Renewal	<del>R4-29-207</del> R4-29-208	30	90	100	15	130
Broaden	R4-29-212	30	90	100	<del>180</del> 360	130
Activate	R4-29-210	<del>30</del>	<del>90</del>	<del>100</del>	<del>45</del>	<del>130</del>
Qualified applicator (QA)	R4-29-204	<del>30</del>	<del>90</del>	<del>100</del>	<del>360</del>	<del>130</del>
New Renewal Broaden	R4-29-208	<del>30</del>	<del>90</del>	<del>100</del>	<del>15</del>	<del>130</del>
	R4-29-210	<del>30</del>	<del>90</del>	<del>100</del>	<del>360</del>	<del>130</del>
Qualifying Party (QP)	A.R.S. § 32-2314					
New	<del>R4-29-204</del> R4-29-205	30	90	100	<del>180</del> 90	130
Renewal	<del>R4-29-207</del> R4-29-208	30	90	100	15	130
Broaden	R4-29-210	30	90	100	90	130
Temporary	<del>R4-29-208</del> R4-29-205	10	10	10	15	20
Renew Temporary	R4-29-209	<del>10</del>	<del>10</del>	<del>100</del>	<del>45</del>	<del>110</del>
Broaden	R4-29-212	30	90	<del>100</del>	<del>180</del>	<del>130</del>
Activate	R4-29-211	30	90	<del>100</del>	<del>45</del>	<del>130</del>
Business	A.R.S. § 32-2313;					
New	<del>R4-29-202;</del> R4-29-208;	30	90	100	15	130
Renewal	R4-29-209	30	90	<del>100</del>	<del>45</del>	<del>130</del>
Branch Office	R4-29-206	30	90	<del>100</del>	<del>45</del>	<del>130</del>
Name Change	R4-29-207	30	90	<del>100</del>	<del>45</del>	<del>130</del>
	R4-29-213					
	R4-29-214					

**Notices of Exempt Rulemaking**

Branch Office	<u>A.R.S. § 32-2315</u> <u>R4-29-206</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>15</u>	<u>130</u>
Branch supervisor New Renewal	<u>A.R.S. § 32-2315</u> <u>R4-29-206</u> <u>R4-29-208</u>	<u>30</u> <u>30</u>	<u>90</u> <u>90</u>	<u>100</u> <u>100</u>	<u>90</u> <u>15</u>	<u>130</u> <u>130</u>
Continuing Education Approval	<u>A.R.S. § 32-2319</u> <u>R4-29-216</u>	20	60	55	15	75

**ARTICLE 2. OBTAINING, RENEWING, ACTIVATING OR INACTIVATING A LICENSE; EXAMINATION; CONTINUING EDUCATION REQUIREMENT; APPROVAL OF CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION**

**R4-29-201. Activities that Require a License; ~~General Provisions~~ Exemptions**

- ~~A. Unless exempt under A.R.S. § 32-2311, an individual who provides pest management services shall obtain an applicator license from the Commission. An applicator shall perform pest management services only on behalf of a business licensed by the Commission.~~
- ~~B. To obtain a license as a qualifying party, an individual shall also be licensed as an applicator.~~
- ~~C. A licensed business shall provide pest management services only if the licensed business employs at least one individual who holds a qualifying party license. A licensed business shall provide pest management services in a category only if the licensed business employs an individual who has an activated qualifying party or temporary qualifying party license in the category.~~
- ~~D. A licensed qualifying party or temporary qualifying party shall not qualify more than one licensed business. A licensed business may employ more than one licensed qualifying party.~~
- ~~E. An applicator or qualifying party shall provide pest management services only in the category for which the applicator or qualifying party is licensed. To provide pest management services in a new category, an applicator or qualifying party shall complete the license broadening process described in R4-29-212.~~
- ~~F. Under A.R.S. § 32-2312(D), an applicant for licensure is required to be of good moral character. The Commission shall deny a license to an applicant determined not to be of good moral character. In determining whether an applicant is of good moral character, the Commission shall consider whether the applicant:~~
- ~~1. Committed an act, which, if committed by a licensee, would be grounds for disciplinary action against the licensee;~~
  - ~~2. Has been convicted of a felony or a misdemeanor; or~~
  - ~~3. Cheated on a licensing examination.~~
- ~~G. The holder of a license issued by the Commission shall not assign or transfer the license.~~
- ~~H. An applicator license expires on May 31 except that a new applicator license that is issued in May is valid until May 31 of the following year.~~
- ~~I. A qualifying party or business license expires on December 31 except that a new qualifying party or business license issued in December is valid until December 31 of the following year.~~
- ~~J. If a licensee files a timely and complete renewal application, the existing license does not expire until the Commission issues a notice granting or denying renewal. If the Commission denies license renewal, the existing license does not expire until all administrative appeals are exhausted.~~
- A. Business license. A person doing an activity defined as the business of pest management shall first possess a valid business license, unless the person is:
1. A political subdivision;
  2. Acting on behalf of a business licensee or political subdivision; or
  3. Otherwise exempt by this Chapter or the OPM's statutes.
- B. Qualifying party registration. A business licensee or school district shall only do an activity defined as the business of pest management if the business licensee or school district has a registered qualifying party. The business licensee or school district shall only provide pest management services in a certification category if the qualifying party is registered in that certification category.
- C. Applicator licensure.
1. An individual who provides pest management services shall be a certified applicator and only provide pest management services in a certification category for which the applicator is currently certified except as provided under subsections (C)(2) and (C)(3) or as otherwise exempt by this Chapter or the OPM's statutes.
  2. A certified applicator desiring to work in a category for which the applicator is not certified shall become certified in the category within 30 calendar days after beginning work in that category and shall be supervised as provided in subsection (C)(3)(c) while working in that category.
  3. An individual may provide pest management services on behalf of a business licensee without being a certified applicator if the individual:
    - a. Is registered as an applicator of the business licensee under R4-29-207;

Notices of Exempt Rulemaking

- b. Has been registered as an applicator of the business licensee for not more than 90 calendar days out of the last 365 days; and
- c. Is supervised by a certified applicator who:
  - i. Is certified in the category for which supervision is provided;
  - ii. Provides immediate supervision when the individual performs pest management services in the wood-destroying organism treatment, aquatic, or fumigation category, uses a restricted use pesticide, or uses a pesticide under an experimental use permit; and
  - iii. Provides direct supervision when the individual performs pest management services not covered by subsection (C)(3)(c)(ii).
- 4. An individual may not provide pest management services at a school, child care facility, health care institution, or food-handling establishment unless the individual is a certified applicator in the certification category for which services are being provided.
- 5. An individual using an animal to assist with identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations shall be a certified applicator in the certification category for which services are being provided.
- D.** Applicator registration. An applicator may not provide pest management services on behalf of a business licensee or political subdivision unless the applicator is registered as an applicator of the business licensee or political subdivision pursuant to R4-29-207.
- E.** Exemptions. A person is not required to be licensed who:
  - 1. Provides general information about a label or labeling, the identification or management of a pest, integrated pest management or the use of a registered pesticide; does not directly or indirectly charge for the information; and does not make an on-site recommendation.
  - 2. Performs sales work that does not include:
    - a. Identifying on-site infestations or making inspections for the purpose of identifying or attempting to identify infestations;
    - b. Making written or oral inspection reports or on-site recommendations with respect to infestations; or
    - c. The application of pesticides or the use of devices for the purpose of eliminating, exterminating, controlling or preventing infestations.
  - 3. Is an authorized representative of any educational institution engaged in research in the study of pest management and does not provide pest management services for hire.
  - 4. Is a certified home inspector and documents evidence of wood-destroying organisms on a home inspection, but does not prepare a WDIIR, prepare a treatment proposal, make treatment estimates, bids, or recommendations, apply pesticides, or use devices.

**R4-29-202. License Exemptions; Unlicensed Persons Repealed**

- A.** ~~In addition to the exemptions in A.R.S. § 32-2311, a person is not required to be licensed by the Commission if:~~
  - 1. ~~The person provides general information about a label or labeling, identifying or controlling a pest, integrated pest management, or use of an EPA or Arizona Department of Agriculture registered pesticide, does not directly or indirectly charge for the information provided, and does not make an onsite recommendation; or~~
  - 2. ~~The person performs sales work that does not include any of the tasks identified under A.R.S. § 32-2301 as comprising the business of structural pest control or structural pest control.~~
- B.** ~~Even if not required to be licensed by the Commission, a person shall not misuse a pesticide or device. Misuse includes using, applying, handling, or storing a pesticide in a manner inconsistent with the label or labeling, or using a device for an unintended purpose as indicated by the labeling of the device.~~
- C.** ~~An allegation that an unlicensed person misused a pesticide may be investigated by the Commission or the EPA and may be prosecuted by the EPA.~~
- D.** ~~If a licensee fails to renew because the licensee is on active military duty but applies for renewal within 100 days of honorable separation from active military duty, the Commission shall process the renewal application as timely and not charge the penalty prescribed under R4-29-105.~~
- E.** ~~Under A.R.S. § 32-2312, an unlicensed person employed by a business licensee may apply pesticides for a maximum of 90 days from the date of employment if the unlicensed person is supervised by a licensed applicator or qualifying party and the applicator or qualifying party providing supervision:~~
  - 1. ~~Is licensed in the category for which supervision is provided;~~
  - 2. ~~Provides immediate supervision while the unlicensed person performs wood-destroying insect control or fumigation, or uses a restricted use pesticide; and~~
  - 3. ~~Provides direct supervision while the unlicensed person performs pest management services not listed in subsection (E)(2).~~

**R4-29-206-R4-29-202. Obtaining a Business License**

- A.** ~~An applicant for a business license to conduct pest management services shall submit the following information to the~~

Notices of Exempt Rulemaking

~~Commission~~ on a form obtained from the ~~Commission~~ OPM:

1. ~~About the qualifying party who will qualify the business:~~
    - a. ~~Full name;~~
    - b. ~~Physical address;~~
    - e. ~~Mailing address, if different from the physical address;~~
    - d. ~~Electronic mail address, if any;~~
    - e. ~~Date of birth;~~
    - f. ~~Social Security number;~~
    - g. ~~Telephone number;~~
    - h. ~~Qualifying party license number and applicator license number, if any;~~
    - i. ~~License category of qualification; and~~
    - j. ~~The dated signature of the qualifying party;~~
  2. ~~About the business license applicant:~~
    - a. ~~Full name;~~
    - b. ~~Mailing address;~~
    - e. ~~Electronic mail address, if any;~~
    - d. ~~Telephone number;~~
    - e. ~~Date of birth; and~~
    - f. ~~Social Security number;~~
  3. ~~About the business:~~
    - a. ~~Business name;~~
    - b. ~~Name and form of business organization and organization;~~
    - c. ~~Names of the following persons authorized to act on behalf of the business:~~
      - i. ~~Owner if a sole proprietorship;~~
      - ii. ~~Managing or general partner if a partnership;~~
      - iii. ~~President, secretary, and statutory agent~~ President and other authorized officers if a corporation;
      - iv. ~~Manager or at least two~~ All the managers or members if a limited liability company; or
      - v. ~~Designated agent of an appointed or elected person or body if the state or a political subdivision; or~~
      - vi. ~~Person authorized to make decisions for the business if any other type of business form;~~
    - c. ~~Telephone number;~~
    - d. ~~Fax number;~~
    - e. ~~Physical address;~~
    - f. ~~Mailing address, if different from physical address; and~~
    - g. ~~E-mail address; and~~
    - g. ~~Chemical storage address; and~~
    2. Daytime telephone number of individuals identified under subsection (A)(1)(c);
    3. Name of the qualifying party; and
    4. The business applicant's dated signature and title of an authorized representative of the business affirming that the information provided is true and correct.
- B.** In addition to the form required under subsection (A), an applicant shall submit:
1. ~~The fee specified in R4-29-105~~ R4-29-103;
  2. ~~A completed Business License Application Supplement that includes the following information about the pest management business:~~
    - a. ~~A description of how the qualifying party will manage the business;~~
    - b. ~~A description of how the qualifying party will supervise the pest management services provided by the business;~~
    - e. ~~A description of plans to provide training for all licensed applicators employed by the business;~~
    - d. ~~A description of how the business will comply with the financial responsibility requirements in A.R.S. § 32-2313;~~
  2. The proof of financial security required by A.R.S. § 32-2313;
  - e. ~~3. The names of all individuals who own at least 10 percent~~ principals of the business as defined in subsection (G);
  - f. ~~4. The name and physical address~~ of the statutory agent of the business; and
    - g. ~~If a corporation, the names of all corporate officers;~~
  3. ~~The following information on a completed Commission insurance certificate if the applicant will fulfill the financial responsibility requirements by purchasing liability insurance or a surety bond:~~
    - a. ~~Name, address, and telephone number of the insured;~~
    - b. ~~Existing business licenses held by the applicant;~~
    - e. ~~Name, address, and telephone number of the insurer;~~
    - d. ~~Name, address, and telephone number of the insurance producer or broker;~~
    - e. ~~Number of the insurance policy or surety bond, effective and expiration dates, limits, and deductible, if any;~~



Notices of Exempt Rulemaking

- f. ~~The categories of work covered by the insurance or bond; and~~
  - g. ~~The dated signature and title of an agent of the insurer or producer or broker certifying that:~~
    - i. ~~The company is authorized by the Arizona Department of Insurance to do business in Arizona;~~
    - ii. ~~The insurance or bond has been issued to the insured for the period indicated;~~
    - iii. ~~The insurance or bond complies with the Commission's statutes regarding coverage endorsements;~~
    - iv. ~~The company will notify the Commission in writing within 30 days if the insurance or bond is cancelled, revoked, or falls below the legal limit or if the deductible exceeds \$10,000; and~~
    - v. ~~The company will furnish information regarding the insurance or bond to the Commission upon request; and~~
- 4.5. A copy of the Articles of Incorporation or Organization, Certificate of Limited Partnership, trust, trade name certificate, partnership agreement, or other evidence of the form of business organization.
- C. ~~The Commission shall deny use of a business license name that the Commission determines is similar to an existing business name and may cause a reasonable person to confuse the two businesses. A business cannot be licensed without a registered qualifying party.~~
- D. ~~If the Commission OPM determines there may be cause to deny a license to an applicant, the Commission shall OPM may send a written notice to the applicant specifying the date and time for requiring the applicant to appear at a Commission meeting and specific location, date and time to answer questions.~~
- E. ~~The Commission shall issue a business license to an applicant that the Commission determines is qualified under A.R.S. § 32-2313 and this Chapter. The business license, which is valid until December 31, authorizes the licensee to operate a structural pest control business in each category in which the licensee employs a qualifying party licensed in the category. A business license expires on May 31, and is:~~
  - 1. Issued with an expiration in the following calendar year as an initial licensure; and
  - 2. Renewable for one or two years, depending on the renewal period selected by the applicant.
- F. A business license may not be transferred except in accordance with R4-29-209 and may not be renewed beyond the expiration of the registration for the business's qualifying party.
- G. For the purposes of this Section, principal means a person who owns at least a 10 percent interest in a business. Principal includes an owner that is itself a business as well as owners of a principal.

**R4-29-203. Obtaining an Applicator License Certification**

- A. Application. An applicant for an applicator license certification shall submit the fee specified in R4-29-103 and the following information to the Commission on a form obtained from the Commission OPM:
- 1. Full name;
  - 2. Applicator ~~license~~ certification number, if any;
  - 3. ~~Physical Home~~ address;
  - 4. Mailing address, if different from the ~~physical home~~ address;
  - 5. Telephone number;
  - 6. ~~Electronic mail E-mail~~ address, if any;
  - 7. Date of birth;
  - 8. Social Security number;
  - 9. ~~A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, submit:~~
    - a. ~~A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;~~
    - b. ~~A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;~~
    - c. ~~A complete set of fingerprints; and~~
    - d. ~~The fee for fingerprint processing;~~
- ~~10.9.~~ A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, the date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
- ~~11.10.~~ Name of employer, if any;
- ~~12.11.~~ Employer's business license number, if applicable;
- ~~13.12.~~ Employer's telephone number, if applicable; and
- ~~14.~~ License category for which application is made; and
- ~~15.13.~~ The applicant's dated signature affirming that the information provided is true and correct.
- ~~B.~~ In addition to the form required under subsection (A), an applicant shall submit the fee specified in R4-29-105.
- ~~C.~~ Under the authority at A.R.S. § 32-2304(B)(2), if the Commission determines it is in the best interest of the state, the Commission shall require an applicant to submit a complete set of fingerprints and the fee for fingerprint processing.
- ~~D.~~ If the Commission determines that an applicant is eligible for licensure, the Commission shall notify the applicant that the applicant may schedule and take a licensing examination described under R4-29-205.
- B. An applicator shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude

**Notices of Exempt Rulemaking**

may demonstrate a lack of good moral character. A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:

1. Murder involving the death of a law enforcement officer.
2. An offense described in A.R.S. § 13-2308.01 related to terrorism.
3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.

**C.** Examination. An applicant shall take and pass the certification examinations as provided in R4-29-211 in order to become certified.

**D.** An applicant for initial certification shall be at least 18 years of age.

**E.** If the Commission OPM determines there may be cause to deny a license certification to an applicant, the Commission shall OPM may send a written notice to the applicant specifying the date and time for requiring the applicant to appear at a Commission meeting and specific location, date and time to answer questions.

**F.** The Commission shall issue a license to an applicant who meets all of the qualifications in A.R.S. § 32-2312 and this Chapter and passes the licensing examinations. The license authorizes the applicator to provide pest management services until May 31 if the applicator is employed by a licensed business.

**F.** Certification. Applicator certification is not transferable, expires on May 31, and is:

1. Issued with an expiration in the following calendar year as an initial certification.
2. Renewable for one or two years, depending on the renewal period selected by the applicant, and
3. Renewed for all certification categories for the same renewal period.

**R4-29-204. ~~Obtaining a Qualifying Party License~~ Qualified Applicator Certification**

**A.** Before applying for a qualifying party license, ~~QA certification~~, an applicant shall hold an have applicator license for certification in each category in for which a qualifying party license is sought the applicant seeks QA certification and fulfill the practical experience requirement for each category.

**B.** Application. An applicant for a qualifying party license ~~QA certification~~ shall submit the fee specified in R4-29-103 and the following information to the Commission on a form obtained from the Commission OPM:

1. Full name;
2. Applicator license number; certification number, if any;
3. ~~Qualifying party license~~ QA certification number, if any;
4. ~~Physical~~ Home address;
5. Mailing address, if different from the ~~physical~~ home address;
6. Telephone number;
7. ~~Electronic mail~~ E-mail address, if any;
8. Date of birth;
9. Social Security number;
10. A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, submit:
  - a. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status; and
  - b. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;

~~11.~~10. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;

~~12.~~11. Name of employer, if any;

~~13.~~12. Employer's business license number, if applicable;

~~14.~~13. Employer's telephone number, if applicable;

~~15.~~14. License category Certification categories for which application is made; and

~~16.~~15. The applicant's dated signature affirming that the information provided is true and correct.

**C.** In addition to the form required under subsection (B), an applicant shall submit:

1. The fee specified in R4-29-105;
2. Evidence of the hours of practical experience required under A.R.S. § 32-2314(C)(2) in each category for which the applicant seeks licensure. Evidence that is acceptable to the Commission includes:
  - a. A completed Verification of Practical Experience form that is signed by a business or qualifying party licensee or another person with first hand knowledge of the applicant's experience and notarized;
  - b. Payroll records, invoices, route sheets, or calendars;
  - c. Letters from persons with first hand knowledge of the applicant's experience; and
  - d. An official transcript from an educational institution at which the applicant completed relevant course work;
3. A complete set of fingerprints; and
4. The fingerprint processing fee.

**D.** The Commission shall send a written notice to an applicant for a qualifying party license regarding the date and time that

Notices of Exempt Rulemaking

~~the applicant is to appear at a Commission meeting for an evaluation of the applicant's practical experience and to be authorized to schedule and take the licensing examination described under R4-29-205. The applicant shall appear as noticed.~~

- ~~E. The Commission shall issue an inactive license to an applicant who meets all of the qualifications in A.R.S. § 32-2314 and this Chapter and passes the licensing examination. Before working as the qualifying party of a licensed business, the licensee shall activate the license.~~
- ~~F. An active qualifying party license authorizes the licensee to qualify one licensed business until December 31. A qualifying party licensee may qualify the one licensed business in each category in which the qualifying party is licensed.~~
- ~~G. If a qualifying party applicant whose application is closed under R4-29-107(B)(3) or (C) submits a new application under subsections (B) and (C) within one year after the prior application closed, the Commission shall not require the applicant to appear before the Commission as described in subsection (D) unless the applicant was convicted of a felony or misdemeanor during the time between applications.~~
- C. Experience. An applicant shall possess one of the following qualifications:
  - 1. Certification as an applicator for 24 months within the ten years preceding the application in the category applied for.
  - 2. Certification as an applicator for 12 months within the ten years preceding the application and either:
    - a. Successful completion of 12 semester hours or its equivalent within the 10 years preceding the application in pest management courses directly related to each category applied for; or
    - b. A Bachelor's degree in agricultural sciences, biological sciences, or pest management with 12 semester hours or its equivalent in pest management courses directly related to each category applied for.
  - 3. Twenty four months of verifiable experience in the business of pest management, in another State where licensure was not required, within the ten years preceding application directly related to the category applied for.
- D. For an individual who applies for QA certification within one year of honorable separation from active military duty, the time periods "preceding the application" in subsection (C) are tolled during the term of active military duty.
- E. A QA shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude may demonstrate a lack of good moral character. A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:
  - 1. Murder involving the death of a law enforcement officer.
  - 2. An offense described in A.R.S. § 13-2308.01 related to terrorism.
  - 3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.
- F. OPM review.
  - 1. After notification by the OPM that the applicant is eligible for certification, the applicant may schedule and take the certification examinations described under R4-29-211.
  - 2. If the OPM determines there may be cause to deny certification to an applicant, the OPM may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.
- G. Examination. An applicant shall take and pass the certification examinations as provided in R4-29-211 in order to become certified.
- H. Certification. QA certification is not transferable, expires on May 31, and is:
  - 1. Issued with an expiration in the following calendar year as an initial certification.
  - 2. Renewable for one or two years, depending on the renewal period selected by the applicant, and
  - 3. Renewed for all certification categories for the same renewal period.
- I. For the purposes of this Section, pest management courses means courses in entomology, zoology, vertebrate management, plant pathology, agronomy, general horticulture, plant biology or botany, biochemistry, organic or inorganic chemistry, the eradication or management of weeds, toxicology, the environmental impact of pesticides, or any combination thereof.

**R4-29-205. Qualifying Party Registration; Temporary Qualifying Party Registration**

- A. An applicant for registration as a QP shall submit the fee specified in R4-29-103 and the following information on a form obtained from the OPM:
  - 1. Name;
  - 2. QA certification number;
  - 3. Certification categories to be registered;
  - 4. Name, and license number if applicable, of the business or school district for which the applicant will act as the QP; and
  - 5. Dated signature of the applicant affirming that the information provided is true and correct;
- B. An individual may only register as a QP in categories for which the individual possesses QA certification.
- C. A certified applicator who is the representative of a business licensee or school district may register as a temporary QP if the QP has become disassociated with the business licensee or school district within the last 45 days. A certified applicator may only register as a temporary QP in the categories for which both the former QP was registered and the certified applicator is certified.
- D. An applicant for registration as a temporary QP shall submit the fee specified in R4-29-103 and:

Notices of Exempt Rulemaking

1. The information required in subsection (A), except subsection (A)(2):
  2. The applicant's applicator certification number:
  3. Written confirmation signed by the business licensee, school district, or former QP indicating that the former QP has become disassociated with the business licensee or school district; and
  4. A written statement signed by the business licensee or school district that:
    - a. The business licensee or school district has not operated in the business of pest management for more than five business days since the disassociation in the categories for which the disassociated QP was registered; and
    - b. The business licensee or school district wants the certified applicator to act as a temporary QP.
- E.** A business licensee or school district shall not use a temporary QP to qualify the business or school district in a category for more than 180 days in any 12 month period.
- F.** Registration.
1. QP registration is not transferable, expires on May 31, and is:
    - a. Issued with an expiration in the following calendar year as an initial registration.
    - b. Renewable for one or two years, depending on the renewal period selected by the applicant, and
    - c. Renewed for all registration categories for the same renewal period.
  2. Temporary QP registration is not transferable, is valid for 90 calendar days and may be renewed once.
  3. A QP or temporary QP may only register to qualify one business licensee or school district except as provided in subsection (F)(4).
  4. A QP for school districts shall separately register as a QP for each school district served, but may not register as a QP for more than one school district without approval from the director pursuant to R4-29-402(C).

**~~R4-29-213.~~ R4-29-206. Branch Office Registration; Branch Supervisor Registration**

- A.** ~~A business licensee that wishes to may not~~ do business from a branch office ~~shall register unless~~ the branch office ~~and a~~ branch supervisor are registered with the ~~Commission~~ OPM ~~before doing any business from the branch office.~~
- B.** ~~To register a branch office, the business licensee shall complete a form, that is available on the Commission's web site, and provide~~ submit the fee specified in R4-29-103 and the following information on a form obtained from the OPM:
1. ~~About the business:~~ The business licensee's name and licensee number.
    - a. ~~Name;~~
    - b. ~~License number;~~
    - c. ~~Telephone and fax numbers;~~
    - d. ~~Physical address;~~
    - e. ~~Mailing address, if different from physical address; and~~
    - f. ~~Electronic mail address, if any;~~
    - g. ~~Chemical storage address;~~
  2. ~~About the branch office:~~
    - a. ~~Name of manager;~~ branch supervisor;
    - b. ~~Manager's applicator license~~ Branch supervisor's applicator certification number;
    - c. ~~Telephone and fax numbers;~~
    - d. ~~Physical address;~~
    - e. ~~Mailing address, if different from physical address;~~
    - f. ~~Electronic mail E-mail address, if any; and~~
    - g. ~~Chemical storage address; and~~
    - h. ~~The pest management categories in which the branch office will do business;~~
  3. ~~About the qualifying party:~~
    - a. ~~Name;~~
    - b. ~~Date of birth;~~
    - c. ~~Mailing address;~~
    - d. ~~Telephone number;~~
    - e. ~~Electronic mail address, if any; and~~
    - f. ~~Qualifying party license number; and~~
  4. ~~The dated signature of an authorized representative of the licensed business licensee.~~
- ~~C.~~** ~~In addition to the form required under subsection (B), the business licensee shall submit the fee required under R4-29-105.~~
- ~~D.C.~~** ~~A branch office shall be owned by the business licensee. A branch office shall do business in the name of the licensed business licensee only.~~
- D.** To register as a branch supervisor, the applicant shall submit the fee specified in R4-29-103 and the following information on a form obtained from the OPM:
1. Name.
  2. Applicator certification number.
  3. Business name and license number.
  4. Physical and mailing address of branch office where the applicant will be the supervisor.

Notices of Exempt Rulemaking

5. Branch office telephone and fax numbers.
  6. Dated signature of the applicant affirming that the information provided is true and correct, and
  7. Dated signature of an authorized representative of the business licensee.
- E.** A branch supervisor may only register to supervise a branch office at one physical location.
- F.** Registration. Registration as a branch office or branch supervisor is not transferable, expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial registration, and
  2. Renewable for one or two years, depending on the renewal period selected by the applicant.

**R4-29-207: Renewing an Applicator, Qualifying Party, or Business License Repealed**

- A.** ~~The Commission shall mail a renewal form to a licensee at the licensee's address of record, provide access to a downloadable renewal form, or provide access to online renewal. Timely license renewal is the responsibility of the licensee. Failure to receive notice of renewal does not justify failure to renew.~~
- B.** ~~If a licensee's renewal application is not administratively complete before the license expiration date, the Commission shall require the licensee to pay the penalty prescribed at R4-29-105(B).~~
- C.** ~~Renewal applications are due as follows:~~
1. ~~For an applicator license, May 1;~~
  2. ~~For a qualifying party license, December 1; and~~
  3. ~~For a business license, December 1.~~
- D.** ~~To renew an applicator or qualifying party license, the licensee shall:~~
1. ~~Submit the following information to the Commission on a completed renewal form:~~
    - a. ~~A change in mailing address, if any;~~
    - b. ~~Electronic mail address, if any;~~
    - c. ~~Telephone number;~~
    - d. ~~For a qualifying party, a statement whether the licensee wants to renew or inactivate each category in which the licensee is licensed. An applicator license cannot be inactivated by category but only in whole;~~
    - e. ~~Name of employer;~~
    - f. ~~Name of business for which the qualifying party provides qualification;~~
    - g. ~~A statement whether the licensee has ever been convicted of a felony or a misdemeanor and if the answer is yes, a statement whether all felony convictions have been reviewed and voted on by the Commission and if the answer is no:~~
      - i. ~~A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;~~
      - ii. ~~A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;~~
      - iii. ~~A complete set of fingerprints; and~~
      - iv. ~~The fee for fingerprint processing;~~
    - h. ~~A statement whether the licensee has had a license or permit to practice pest management denied, revoked, or suspended during the last 12 months and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances; and~~
    - i. ~~The licensee's dated signature affirming that the licensee complied with the continuing education requirement under R4-29-215. If the licensee is renewing a license in inactive status, no continuing education is required; and~~
  2. ~~Submit the fee required under R4-29-105.~~
- E.** ~~To renew a business license, the licensee shall:~~
1. ~~Submit the following information to the Commission on a completed renewal form:~~
    - a. ~~A change in mailing address, if any;~~
    - b. ~~Electronic mail address, if any;~~
    - c. ~~Telephone number;~~
    - d. ~~A statement whether the licensee wants to renew an active or inactive license;~~
    - e. ~~Name of the qualifying party in each category in which the business provides structural pest control services;~~
    - f. ~~A statement that the licensee maintains the insurance or surety bond required by A.R.S. § 32-2313; and~~
    - g. ~~The dated signature of the authorized representative of the business; and~~
  2. ~~Submit the fee required under R4-29-105.~~
- F.** ~~If the Commission determines there may be cause to deny a renewal, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.~~
- G.** ~~An applicator, qualifying party, or business licensee that fails to submit a timely and complete renewal application shall not provide pest management services until the Commission provides written notice of the Commission's decision to grant or deny renewal.~~
- H.** ~~The Commission shall not renew a license that is expired for more than 30 days. The former licensee may apply for licensure as a new applicant.~~

Notices of Exempt Rulemaking

**R4-29-207.   Applicator Registration**

- A.** Every applicator of a business licensee or political subdivision shall be registered with the OPM as an applicator for that business licensee or political subdivision before providing pest management services for the business licensee or political subdivision. This requirement is in addition to applicator certification requirements.
- B.** To register an applicator, a person shall submit the fee specified in R4-29-103 and the following information about the applicator on a form obtained from the OPM:
1. Full name;
  2. Name, and license number if applicable, of the business licensee or political subdivision;
  3. For an applicator of a business licensee, identification of the primary or branch office where the applicator's pest management records will be kept;
  4. For a certified applicator, the applicator's certification number;
  5. For an uncertified applicator, the applicator's:
    - a. Home address;
    - b. Mailing address, if different from the home address;
    - c. E-mail address;
    - d. Telephone number;
    - e. Date of birth;
    - f. Social Security number; and
    - g. Information and documentation concerning lawful presence required by A.R.S. § 41-1080; and
  6. Dated signature of the applicant affirming that the information provided is true and correct.
- C.** There is no fee to register an applicator of a political subdivision.
- D.** An uncertified applicator shall be at least 18 years of age.
- E.** Applicator registration is valid from the date the OPM receives all the information required under subsection (B) and the registration fee.
- F.** Applicator registration is non-transferable and expires on May 31.
- G.** A business licensee and OP are jointly responsible for ensuring compliance with this Section.
- H.** The director shall assess a business licensee with a \$150 civil penalty for each unregistered applicator.

**R4-29-208.   Obtaining a Temporary Qualifying Party License Repealed**

- A.** ~~A licensed applicator who is employed by a business licensee may apply for a renewable, temporary qualifying party license if the qualifying party, who is not a temporary qualifying party, of the business has disassociated from the business within the last 45 days.~~
- B.** ~~A temporary qualifying party applicant shall submit the following information to the Commission on a form obtained from the Commission:~~
1. ~~About the business licensee:~~
    - a. ~~Business name;~~
    - b. ~~Business license number;~~
    - c. ~~Physical address;~~
    - d. ~~Mailing address, if different from the physical address;~~
    - e. ~~Telephone number; and~~
    - f. ~~Fax number;~~
  2. ~~About the licensed applicator:~~
    - a. ~~Full name;~~
    - b. ~~Applicator license number;~~
    - c. ~~Physical address;~~
    - d. ~~Mailing address, if different from the physical address;~~
    - e. ~~Telephone number;~~
    - f. ~~Electronic mail address, if any;~~
    - g. ~~Fax number;~~
    - h. ~~A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, a statement whether all felony convictions have been reviewed and voted on by the Commission and if the answer is no:~~
      - i. ~~A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;~~
      - ii. ~~A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;~~
      - iii. ~~A complete set of fingerprints; and~~
      - iv. ~~The fee for fingerprint processing;~~
    - i. ~~A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked,~~

Notices of Exempt Rulemaking

or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;

j. License category for which application is made; and

k. The applicant's dated signature affirming that the information provided is true and correct.

**C.** In addition to the form required under subsection (B), an applicant shall submit:

1. The fee specified in R4-29-105;
2. A written notice of disassociation from the qualifying party who previously qualified the business;
3. A written request from the business licensee that an applicator licensed in the category in which the disassociating qualifying party qualified the business be granted a temporary qualifying party license. The Commission shall not issue a temporary qualifying party license to an applicator to qualify a business in a category different from the category in which the disassociating qualifying party qualified the business;
4. A written statement from the business licensee that the business has not operated since the disassociation in the category for which the disassociated qualifying party qualified the business; and
5. A written description of how the temporary qualifying party will:
  - a. Manage the pest management services provided by the business;
  - b. Supervise the pest management services provided by the business; and
  - c. Train and supervise all licensed and unlicensed applicators employed by the business.

**D.** The Commission shall issue a temporary qualifying party license to an applicant who is qualified under A.R.S. § 32-2314 and this Chapter. The temporary qualifying party license authorizes the licensee to qualify a licensed business for 60 days in each category in which the temporary qualifying party is licensed.

**E.** If a temporary qualifying party license expires, the business licensee qualified by the temporary qualifying party licensee shall not perform pest management services in the category for which the temporary qualifying party qualified the business.

**R4-29-208. License, Certification and Registration Renewal**

**A.** An application to renew a business license, applicator or QA certification, or qualifying party, branch office, branch supervisor, or applicator registration is due May 1 of the year the license, certification, or registration expires. Failure to receive a renewal application does not justify a failure to timely renew.

**B.** An applicant for renewal shall submit the following information on a form obtained from the OPM:

1. All renewals:
  - a. A change in physical address and mailing address, if any;
  - b. E-mail address;
  - c. Telephone number;
  - d. Dated signature of the applicant affirming that the information provided is true and correct; and
  - e. License specific information described in this subsection, if applicable.
2. Business license:
  - a. Name of the qualifying party in each category for which the business provides pest management services, and
  - b. Proof that the licensee still meets the financial security requirement in A.R.S. § 32-2313; and
  - c. A change in the chemical storage address, if any.
3. Applicator and QA certification:
  - a. Name of employer, if any;
  - b. A statement whether the applicant has had a license or permit to practice pest management denied, revoked, or suspended during the last 12 months and if the answer is yes, the date, jurisdiction taking the action, nature of the action, and explanation of the circumstances; and
4. Applicator registration: The names and if applicable certification numbers of all of the business licensee's current applicators.

**C.** An applicant for renewal shall select a one or two year renewal period and shall pay the renewal fee listed in R4-29-103 for each year of renewal.

**D.** CEU requirements. The director shall not renew a certification unless, prior to the expiration of the current certification, the applicator obtains the CEUs required by R4-29-215.

**E.** Expired license, certification, or registration.

1. An applicant who submits a complete renewal application, including the renewal fee, after the expiration of the license, certification, or registration shall pay the late fee listed under R4-29-103 as a penalty in addition to the renewal fee.
2. An applicant may renew an expired applicator or QA certification without retaking the written examinations provided the applicant:
  - a. Has satisfied the CEU requirements, and
  - b. Submits a complete renewal application, including the renewal fee, and the late fee by June 30.
3. An applicant seeking to renew an expired applicator or QA certification who does not meet the requirements in subsection (E)(2) shall apply as a new applicant and shall retake and pass the applicable certification examinations.

Notices of Exempt Rulemaking

4. A business license that has been expired for more than one year may not be renewed. The former licensee may apply as a new applicant.
5. Notwithstanding subsections (E)(1)-(4), an applicant who fails to renew because the applicant is on active military duty may apply for renewal within one year of honorable separation from active military duty without paying a late fee.

**F. Renewal effective date.**

1. If an applicant submits a complete application for renewal, including the renewal fee, before the expiration of the license, certification, or registration, then the license certification, or registration does not expire until:
  - a. The renewal has been approved; or
  - b. In the case of denial or new limits on the license, certification, or registration, the last day for seeking review of the OPM order or later date fixed by a court.
2. If an applicant fails to submit a complete application for renewal, including the renewal fee, before the expiration of the license, certification, or registration, then the license, certification, or registration expires as provided in this Article and is not valid until the OPM has approved the renewal application. A business, branch office, or applicator with an expired license, registration, or certification may not provide pest management services or otherwise engage in the business of pest management. A qualifying party with an expired registration may not qualify a business licensee or school district. A branch supervisor with an expired registration may not supervise a branch office.

**~~R4-29-214.~~R4-29-209. Change in a Business Licensee**

- ~~A.~~ If a sole proprietor business licensee dies or becomes disabled, the spouse of the sole proprietor business licensee may apply to the Commission to have the business license transferred to the spouse. The Commission shall transfer the business license to the spouse of the dead or disabled sole proprietor business licensee if the spouse agrees to fulfill all the responsibilities of a business licensee and to honor all customer warranties provided by the business.
- ~~B.~~ Except as provided in subsection (A), a business licensee shall stop providing pest management services and apply for a new business license immediately after the owner of a sole proprietorship changes.
- A.** Transfer to spouse. A business license may be transferred to the licensee's spouse without a fee by submission of a Business License Entity Change Application if the licensee's spouse submits evidence of marriage to the licensee, keeps the same business name for the remainder of the licensee period and agrees to honor all of the licensee's customer contracts and warranties.
- B.** Transfer to new entity. A person may request a transfer of a business license to a new entity without a fee by submitting a Business License Entity Change Application if:
1. The owners of the current business licensee own a majority of the new entity.
  2. The new entity keeps the same business name as the current business licensee for the remainder of the licensing period.
  3. The new entity agrees to honor all customer contracts and warranties provided by the current business licensee, and
  4. The current business licensee and the new entity are not the same form of entity.
- C.** When a business license is transferred under subsection (A) or (B), the new licensee shall be responsible for any outstanding fees or penalties owed to the OPM and for any disciplinary action taken by the OPM as a result of violations of this Chapter or the OPM's statutes by the former licensee.
- D.** Except as provided in subsections (A) and (B), a change in ownership of a licensed sole proprietorship requires a new business license.
- E.** If, through a change in ownership, a licensed business's office becomes a branch office of another licensed business, the new owner shall notify the OPM and comply with R4-29-206.
- F.** A business licensee shall report any change in the principals of the business to the OPM within 30 days. Principal means a person who owns at least a 10 percent interest in a business. Principal includes an owner that is itself a business as well as owners of a principal.
- ~~E-G.~~ If a business licensee changes the name or form of the business, the licensee shall provide the following information on a Business Name or Entity Change Application submitted to the Commission within 30 days of OPM prior to the change:
1. ~~Business ownership status;~~
  2. 1. Name of business entity;
  3. ~~Physical address of business entity;~~
  4. Mailing address of business entity, if different from the physical address;
  5. 2. Current business name;
  6. 3. Business license number;
  7. ~~Telephone number;~~
  8. ~~Fax number;~~
  9. ~~Physical address of business;~~
  10. Mailing address of business, if different from the physical address;
  11. ~~Electronic mail address, if any;~~
  12. ~~Chemical storage address of business;~~



Notices of Exempt Rulemaking

- ~~13.4.~~ New business name requested, if any;
- ~~14.~~ Reason for name change, if applicable;
- ~~15.5.~~ Copy of the Registered Trade Name Certificate, amended Articles of Organization or Incorporation, amended Certificate of Limited Partnership, or amended Statement of Partnership Authority or Qualification showing the new name or amended Articles of Organization or Incorporation; and
- ~~16.6.~~ Dated signature of the authorized representative of the business licensee affirming that the information provided is true and correct.

**H.** If a business licensee changes the form of the business, the licensee shall provide the following information on a Business Entity Change Application submitted to the OPM within 30 days of the change:

- 1. Name of licensed business entity;
- 2. Business name and license number;
- 3. Name and form of new business entity;
- 4. Names of the following persons authorized to act on behalf of the new business entity:
  - a. Owner if a sole proprietorship;
  - b. Managing or general partner if a partnership;
  - c. President and other authorized officers if a corporation;
  - d. All the managers or members if a limited liability company; or
  - e. Person authorized to make decisions for the business if any other type of business form;
- 5. Copy of the new business entity's Articles of Organization or Incorporation, Certificate of Limited Partnership, trust, trade name certificate, partnership agreement, or other evidence of the form of business organization;
- 6. As applicable, the Articles of Merger or Consolidation, Statement of Merger, or approved partnership conversion; and
- 7. Dated signature of the authorized representative of the business licensee affirming that the information provided is true and correct.

**~~R4-29-210. Inactivating or Activating an Applicator License Repealed~~**

**~~A.~~** ~~To place a valid, active applicator license on inactive status, the licensee shall submit the following information to the Commission on a form obtained from the Commission:~~

- ~~1. Name;~~
- ~~2. Applicator license number;~~
- ~~3. Physical address;~~
- ~~4. Mailing address, if different from the physical address;~~
- ~~5. Electronic mail address, if any;~~
- ~~6. Date of birth;~~
- ~~7. Social Security number;~~
- ~~8. Telephone number; and~~
- ~~9. Dated signature of the licensee affirming that:~~
  - ~~a. The information provided is true and correct; and~~
  - ~~b. The licensee shall not perform pest management services in any category while the license is on inactive status.~~

**~~B.~~** ~~An inactive license expires on May 31 unless renewed. To renew an inactive license, the licensee shall comply with the renewal provisions at R4-29-207(C) and (D). There is no continuing education requirement to renew an inactive applicator license.~~

**~~C.~~** ~~To activate an inactive applicator license, the licensee shall submit to the Commission:~~

- ~~1. The following information on a form obtained from the Commission:~~
  - ~~a. Name;~~
  - ~~b. Applicator license number;~~
  - ~~c. Categories in which the licensee is licensed;~~
  - ~~d. Physical address;~~
  - ~~e. Mailing address, if different from the physical address;~~
  - ~~f. Electronic mail address, if any;~~
  - ~~g. Date of birth;~~
  - ~~h. Social Security number;~~
  - ~~i. Telephone number;~~
  - ~~j. A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, a statement whether all convictions have been reviewed by the Commission and if the answer is no, submit:~~
    - ~~i. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;~~
    - ~~ii. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;~~
    - ~~iii. A complete set of fingerprints; and~~
    - ~~iv. The fee for fingerprint processing;~~

Notices of Exempt Rulemaking

- k. A statement whether the applicant has ever had a license or permit to practice structural pest control denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
  - l. Name of employer;
  - m. Employer's business license number;
  - n. Employer's telephone number; and
  - o. Dated signature of the licensee affirming that the information provided is true and correct;
  - 2. The fee required under R4-29-105; and
  - 3. Evidence described at R4-29-215(C) of completing six units of continuing education.
- D.** If the Commission determines there may be cause to deny activating an applicator license, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.

**R4-29-212-R4-29-210. Certification Broadening an Applicator or Qualifying Party License**

- A.** To broaden an applicator license, ~~the licensed applicator~~ certification, the applicant shall:
- 1. Submit to the Commission the license application form described in R4-29-203 and indicate on the form the category in which broadening is sought,
  - 2. Submit the fee required under ~~R4-29-105(A)(1)(b)~~, R4-29-103, and
  - 3. Take and pass the licensing certification examination ~~described in R4-29-205~~ for the specific category in which broadening is sought.
- B.** A qualifying party QA is eligible to broaden the ~~qualifying party license~~ a QA certification only if ~~the if, qualifying party holds an applicator license in the category in which broadening is sought, the QA has a valid applicator certification or a qualification listed in R4-29-204(C).~~
- C.** To broaden a ~~qualifying party license, the licensed qualifying party~~ QA certification, the QA shall:
- 1. Submit to the Commission the license application form described in R4-29-204 and indicate on the ~~form~~ application the category in which broadening is sought,
  - 2. Submit the fee required under ~~R4-29-105(A)(2)(b)~~, R4-29-103,
  - 3. Submit the evidence of experience required under ~~R4-29-204(C)(2)~~ R4-29-204(C) for the category in which broadening is sought, sought except as provided in subsection (D) of this Section, and
  - 4. ~~Appear at a Commission meeting for an evaluation of the qualifying party's practical experience for the category in which broadening is sought, and~~
  - 5. ~~Take and pass the licensing certification examination described in R4-29-205~~ for the specific category in which broadening is sought.
- D.** If a qualifying party whose application for license broadening is closed under R4-29-107(B)(3) or (C) submits a new application under subsection (C) within one year after the prior application closed, the Commission shall not require the applicant to appear before the Commission as described in subsection (C)(4) unless the applicant was convicted of a felony or misdemeanor during the time between applications.
- D.** Experience exemptions. A QA may become certified without meeting the experience requirement of R4-29-204(C) in the categories of:
- 1. Right-of-way or ornamental and turf if the individual has QA certification in the category of industrial and institutional, wood-destroying organism treatment, ornamental and turf, or right-of-way.
  - 2. Wood-destroying organism management if the individual has QA certification in the industrial and institutional category.
  - 3. Wood preservation if the individual has QA certification in the wood-destroying organism treatment category.

**R4-29-211. Inactivating or Activating a Qualifying Party License Repealed**

- A.** To place a valid, active qualifying party license on inactive status, the licensee shall submit the following information to the Commission on a form obtained from the Commission:
- 1. Name;
  - 2. Qualifying party license number;
  - 3. Physical address;
  - 4. Mailing address, if different from the physical address;
  - 5. Electronic mail address;
  - 6. Date of birth;
  - 7. Social Security number;
  - 8. Telephone number;
  - 9. The license categories to be inactivated;
  - 10. Employer's name and telephone number; and
  - 11. Dated signature of the licensee affirming that:
    - a. The information provided is true and correct; and

Notices of Exempt Rulemaking

- b. ~~The licensee shall not act to qualify a business in an inactive category without activating the license in that category.~~
- B.** ~~An inactive qualifying party license expires on December 31 unless renewed. To renew an inactive license, the licensee shall comply with the renewal provisions at R4-29-207(C) and (D). There is no continuing education requirement to renew an inactive qualifying party license.~~
- C.** ~~To activate an inactive qualifying party license and qualify a new business, the qualifying party licensee and the new business applicant shall:~~
- ~~1. Comply with R4-29-206;~~
  - ~~2. Submit both the fee required to activate a qualifying party license and apply for a business license, and~~
  - ~~3. Submit evidence described at R4-29-215(C) of the qualifying party completing six units of continuing education.~~
- D.** ~~To activate an inactive qualifying party license and qualify an existing business, the qualifying party licensee and the business licensee shall:~~
- ~~1. Comply with R4-29-206;~~
  - ~~2. Submit the fee required to activate a qualifying party license, and~~
  - ~~3. Submit evidence described at R4-29-215(C) of the qualifying party completing six units of continuing education.~~
- E.** ~~If the Commission determines there may be cause to deny activating a qualifying party license, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.~~

**R4-29-205, R4-29-211, Licensing Certification Examination for an Applicator or Qualifying Party Applicant**

- A.** ~~Under A.R.S. §§ 32-2312(C) and 32-2314(C), taking and passing an examination is a condition for licensure as an applicator or qualifying party.~~
- B.A.** ~~An applicant who has received notice from the Commission that the applicant is approved to take the licensing examination for applicator certification or QA certification shall make arrangements to take the examination certification examinations by contacting the Commission OPM or the examination service or testing vendor with which the Commission OPM has contracted.~~
- C.** ~~To assist an applicant to prepare for the licensing examination, the Commission shall maintain a list of study materials on its web site and may provide an examination training class. An applicant may also take an examination training class from a private vendor.~~
- D.** ~~The licensing examination measures knowledge and understanding of both general and category-specific information. To be licensed, an applicant shall score at least 75 percent on the general standards ("core") examination and the category-specific examination for each category in which the applicant seeks licensure.~~
- E.B.** ~~Both the The core and category-specific licensing examination for an applicator and qualifying party examinations may measure knowledge and understanding of the following content areas:~~
- ~~1. Pesticide label and labeling and pesticide types and formulations;~~
  - ~~2. Pest identification, life cycles, and habits;~~
  - ~~3. Safety and environmental factors relating to the use, handling, storage, and disposal of pesticides;~~
  - ~~4. Application techniques, calibration and dilution, and equipment types, uses, and maintenance; and~~
  - ~~5. Laws and rules.~~
- F.** ~~The Commission or the examination service or testing vendor shall provide immediate, written notice to an applicant regarding whether the applicant passed a licensing examination.~~
- C.** ~~To be certified, an applicant shall score at least 75 percent on the general standards ("core") examination and on the category-specific examination in each category for which the applicant seeks certification.~~
- G.D.** ~~An applicant shall not take the same examination more than once on the same day who fails an examination may not retake the examination for at least seven days or more than two times in a 6-month period.~~
- E.** ~~An examination score is only valid for the earlier of 12 months from the date of application for certification or 12 months from the examination date.~~
- H.F.** ~~The Commission OPM shall immediately close void the examination score and deny the application of an applicant that the Commission OPM determines cheated on an examination. The applicant may not reapply for one year.~~
- I.** ~~If an application is closed under subsection (H), the score received on the examination is void.~~

**R4-29-212. Reciprocity**

Notwithstanding the examination requirements in R4-29-203(C), R4-29-204(G), and R4-29-211, the director may waive the examination requirements in whole or in part for an individual who is certified as an applicator pursuant to A.R.S. Title 3, Chapter 2 or by another state.

**R4-29-213. Political Subdivision Responsible Individual**

- A.** A political subdivision that uses pesticides to conduct pest management on property that is owned, leased or managed by the political subdivision, including easements, shall designate an individual or individuals responsible for the following:
1. Responding to inquiries or concerns by the Director or the Director's designee regarding compliance with A.R.S. Title 32, Chapter 22.

Notices of Exempt Rulemaking

2. Identifying for the Director or the Director's designee where records required by this Chapter are maintained, where personal protection equipment is located, and where pesticides are stored.
3. Demonstrating that all applicators are properly certified.
- B.** The political subdivision shall annually submit the following information about the responsible individual(s) during the month of May on a form obtained from the Director or the Director's designee:
  1. Full name;
  2. Physical address;
  3. Mailing address, if different from the physical address;
  4. E-mail address;
  5. Telephone number;
  6. Dated signature of the responsible individual(s) affirming that the information provided is true and correct.
- C.** If the political subdivision changes its responsible individual(s), the political subdivision shall provide the information about the new responsible individual(s) listed in subsection (B) to the Director within 30 days.
- D.** School districts are exempt from this Section.

**R4-29-214. Renumbered**

**R4-29-215. Continuing Education Requirement for an Applicator or Qualifying Party**

- A.** ~~An A~~ A certified applicator or qualifying party shall who is not a QA shall, during the current certification period, obtain six units of continuing education within the 13 months before a license renewal application is submitted under R4-29-207 CEUs in order to renew the certification for one year or 12 CEUs in order to renew for two years.
- B.** ~~Continuing education units used to renew an applicator license may be used to renew the applicator's qualifying party license if the continuing education units were obtained within 13 months before the qualifying party license renewal application is submitted. Continuing education units used to renew a qualifying party license may be used to renew the qualifying party's applicator license if the continuing education units were obtained within 13 months before the applicator license renewal application is submitted.~~
- C.** ~~To document attendance at a continuing education an applicator or qualifying party shall obtain a verification of attendance from the continuing education provider that includes:~~
  1. ~~The applicator's or qualifying party's name;~~
  2. ~~The applicator's or qualifying party's license number;~~
  3. ~~The name of the continuing education;~~
  4. ~~The name of the continuing education provider;~~
  5. ~~The date of the continuing education; and~~
  6. ~~The number of continuing education units obtained.~~
- D.** ~~An applicator and qualifying party shall maintain a verification of attendance for one year and make the verification of attendance at a continuing education available for review by the Commission upon request.~~
- E.** ~~An applicator or qualifying party may earn one unit of continuing education each year for attending a regularly scheduled meeting of the Commission in its entirety. To ensure receipt of a verification of attendance, an applicator or qualifying party shall contact the Commission staff before attending a Commission meeting and sign the meeting sign-in sheet.~~
- B.** A QA shall, during the current certification period, obtain 12 CEUs in order to renew the certification for one year or 24 CEUs in order to renew for two years.
- C.** For an individual who holds both a certified applicator license and a QA license, obtaining the units required in subsection (B) satisfies the requirement in subsection (A).
- D.** CEUs earned during a certification period that are in excess of the requirements in this Section do not carry forward for use in a subsequent certification period.
- F.E.** ~~An applicator or qualifying party who teaches a continuing education course may earn one unit of continuing education for each hour taught, not more than once during a calendar year.~~
- E.** No CEU credit will be earned by an attendee of a continuing education course who does not complete the course.

**R4-29-216. Requirements for Approval of Continuing Education Approval**

- A.** ~~Only continuing education courses approved by the Commission OPM may be used to satisfy the continuing education requirement in R4-29-215. The Commission OPM shall approve a continuing education course only if it the course addresses:~~
  1. ~~Pesticide labels and labeling;~~
  2. ~~Safety, environmental factors, and consequences;~~
  3. ~~Pesticide use and disposal;~~
  4. ~~Laws and rules related to pest management and the business of pest management;~~
  5. ~~Application techniques;~~
  6. ~~Calibration and dilution;~~
  7. ~~Equipment;~~
  8. ~~Pest identification;~~

Notices of Exempt Rulemaking

9. Life cycles and habits;
10. Calculation and measurements;
11. New pest management technologies; ~~or~~
12. Integrated pest management; or
- ~~12-13. Licensee responsibilities.~~

~~B.~~ An applicator, qualifying party, or continuing education provider may apply to the Commission for approval of continuing education.

~~C.B.~~ A person applying for approval of continuing education who wishes to have the OPM determine whether a course qualifies for CEU credit shall submit the following information to the ~~Commission~~ OPM:

- ~~1. A continuing education approval application form, obtained from the Commission, that provides the following information:-~~
  - ~~a.1. Type of continuing education listed under subsection (A);~~
  - ~~b.2. Name of continuing education provider;~~
  - ~~c.3. Address and telephone number of continuing education provider;~~
    - ~~d. Topic of continuing education;~~
    - ~~e. Pest management category of continuing education;~~
    - ~~f. Date, time, and location of the continuing education, if known at the time of the application. If this information is not known at the time of application, the person applying for approval of the continuing education shall submit this information when it is known;~~
  - ~~4. Course outline, listing the subjects and indicating the amount of time allocated for each subject;~~
  - ~~5. Brief description of the information covered within each subject;~~
  - ~~6. Brief biography of the presenter, demonstrating the presenter's qualifications;~~
  - ~~7. Whether a fee is charged for attending the course;~~
  - ~~8. Date and location of each session;~~
  - ~~9. Whether the course is open to the public;~~
  - ~~g.10. Number of continuing education units sought;~~
  - ~~h.11. Previous continuing education number, if any; and~~
    - ~~i. Level and type of instruction;~~
    - ~~j. Description of learning activities;~~
    - ~~k. Frequency at which the continuing education will be offered;~~
    - ~~l. Method of proof of attendance in addition to on-line reporting; and~~
  - ~~m.12. Dated signature of applicant;~~
- ~~2. An instructor application or resume that includes information about the instructor's education and experience relevant to pest management;~~
- ~~3. An outline of the subject matter to be covered in the continuing education that demonstrates the continuing education will address at least one of the topics identified in subsection (A);~~
- ~~4. A copy of any material that will be used or provided to those who attend;~~
- ~~5. A copy of an examination, if any, used to measure learning; and~~
- ~~6. A copy of promotional materials, if any.~~

~~D.C.~~ The provider of an approved continuing education course shall:

- ~~1. Provide a verification of attendance that meets the requirements of R4-29-215(C) to each individual who completes the continuing education;~~
- ~~2.1. Enter attendance information using the Commission's OPM's on-line continuing education reporting tool within 10 days after the date of the continuing education; education course, and~~
- ~~3.2. Maintain a copy of the verification of attendance ~~or~~ and original sign-in sheet that lists the attendees' names and license certification numbers for two years.~~
- ~~3. Allow OPM and Department employees to attend the course and review course materials without charge, except that the provider has no obligation to provide food to the employees that is made available for paying attendees.~~
- ~~4. Notify OPM in writing of the date, time and place of each continuing education course at least two weeks before each course. In-house and online courses are exempt from this requirement.~~

~~E.D.~~ Unless otherwise indicated in the notice of approval, the ~~Commission's~~ OPM's approval of a continuing education course is valid for two years.

~~F.E.~~ Approval of a continuing education course is not renewable. To reapply for approval of a continuing education course, a person shall comply with the requirements of subsection ~~(C)~~ (B).

~~G.F.~~ The provider of an approved continuing education course shall provide notice and updated information to the ~~Commission~~ OPM within 10 days after the subject matter or instructor of the ~~approved continuing education course~~ changes.

~~H.G.~~ To evaluate the effectiveness of a continuing education course, the ~~Commission~~ OPM may monitor an approved continuing education course at no cost. ~~Upon request by the Commission, a continuing education provider shall pro-~~

Notices of Exempt Rulemaking

~~vide the Commission with the date and time that approved continuing education will be provided.~~

~~I.H.~~ The ~~Commission~~ OPM shall revoke its approval of a continuing education course if the ~~Commission~~ OPM determines that the continuing education course fails to meet the standards for approval listed in this Section, the continuing education provider provided false information on its application or false information pertaining to attendance, or the continuing education provider fails to comply with the ~~Commission's~~ OPM's statutes and this Chapter.

I. The OPM may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the OPM modifies the number of CEUs earned, the OPM shall send a letter of modification to the course organizer, who shall be required to inform all individuals who attended the course.

**ARTICLE 3. APPLICATOR DUTIES AND RESPONSIBILITIES PEST MANAGEMENT**

**~~R4-29-304~~ R4-29-301. Using Pesticides and Devices**

- A. An applicator shall use only a pesticide that is currently registered for use by ~~both the EPA and the Arizona Department of Agriculture~~ or was registered by the Department and does not have a passed EPA end use date.
- B. An applicator shall not misuse a pesticide or device. It is misuse of a pesticide or device if an applicator:
1. Applies, handles, stores, or disposes of a pesticide or device in a manner that is inconsistent with the label or labeling;
  2. Provides a pest management service or handles a pesticide without wearing clothing and using the personal protective equipment required by the label or labeling to protect the applicator from pesticide exposure;
  3. Uses a pesticide in a manner that causes the pesticide to come into contact with a person, other than the applicator, animal, or property, other than the property receiving the pest management service, unless the contact results from an accident beyond the reasonable control of the applicator;
  4. Uses a pesticide in a food-handling establishment that the label or labeling recommends not be used in a food-handling establishment; and
  5. Uses a pesticide in a manner that contaminates food, feed, or drugs or equipment used to prepare or serve food, feed, or drugs.
- C. While mixing a pesticide with water, an applicator shall protect the water supply from back-siphoning of the pesticide mixture. An applicator shall not add water to a tank in which a pesticide is mixed or from which a pesticide is dispensed by protruding a fill-pipe or hose connection into the tank. An applicator shall ensure that a fill-pipe or hose connection terminates at least two inches above the tank fill opening or is equipped with an effective anti-siphoning device.
- D. An applicator shall ensure that all equipment, including auxiliary equipment such as a hose or metering device, used for mixing or applying a pesticide is in good repair and operating properly.
- E. An applicator shall apply, store, or dispose of a pesticide designated by the EPA as restricted use only if the applicator is ~~licensed, certified~~ or working under the immediate supervision of ~~a licensee~~ licensed, an applicator certified in the category for which the restricted-use pesticide is applicable.
- ~~F.~~ ~~Unless consistent with the label and labeling, an applicator shall not apply a granulated pesticide that bears the statement "Keep out of the reach of children" in a manner that leaves exposed granules on a patio, step, porch, sidewalk, driveway, or floor.~~
- ~~G.F.~~ An applicator shall clean a pesticide spill in accordance with the pesticide label and labeling directions and in a manner that minimizes exposure to humans and other non-target organisms. If a pesticide spill may endanger humans, an applicator shall clean the pesticide spill in accordance with recommendations by health and medical personnel and local authorities.
- ~~H.G.~~ An applicator shall apply a pesticide at a rate provided by a Special Local Need registration issued by the ~~Arizona Department of Agriculture~~ and the pesticide labeling ~~only if the applicator has both the Special Local Need registration and labeling in the applicator's possession at the time of application. The applicator shall have in the applicator's possession at the time of the application both the Special Local Need labeling and the EPA section 3 label and labeling.~~
- ~~I.H.~~ If information regarding provision of a particular pest management service is not available on the pesticide label or labeling or addressed in the ~~Commission's~~ OPM's statutes or this Chapter, an applicator shall comply with the pesticide manufacturer's recommendation and the general industry practice prevailing in the community at the time the pest management service is provided.
- ~~J.I.~~ If there is a conflict between any provision in this Section and labeling instructions ~~or a local ordinance~~, an applicator shall follow the more specific instruction.

**~~R4-29-306~~ R4-29-302. Storing and Disposing of Pesticides and Devices**

- A. An applicator shall store and dispose of a pesticide or device in a manner consistent with its label and labeling.
- B. An applicator shall store a pesticide in a closed container that is free from corrosion, leakage, or pesticide contamination on the outside of the container and properly labeled.
- C. An applicator shall ensure that a service container bears a durable and legible specimen label with the following information:
1. The name, address, and telephone number of the business licensee or political subdivision;
  2. The common chemical or trade name of the principal active ingredients;
  3. The EPA registration number;

Notices of Exempt Rulemaking

4. The strength of the concentrate or dilution expressed as a percentage of active ingredients;
  5. Any signal word required on the label; and
  6. The phrase "KEEP OUT OF REACH OF CHILDREN."
- D. An applicator shall not place words or markings on a service container or on the label affixed to the service container that are unrelated to the pesticide in the service container, except for markings related to a method of tracking the product.
- E. If the label affixed to a pesticide container becomes lost or damaged, an applicator shall attach ~~an approved~~ a specimen label to the pesticide container.
- F. An applicator shall replace a damaged container, other than a fumigant container, with an identically labeled container or a properly labeled service container.
- G. Application equipment from which a pesticide is directly discharged and in which the pesticide is not stored is not subject to the labeling requirements of this Section.
- H. An applicator shall not store a pesticide in ~~the same room or common air space where~~ a manner which food, beverage, feed, drugs, cosmetics, eating utensils, or tobacco products ~~are stored~~ can be contaminated.
- I. An applicator shall not store a pesticide in a container that was used for food, beverage, feed, drugs, or cosmetics, or which by size, shape, or marking could be confused as being a food, beverage, feed, drug, or cosmetic.
- J. An applicator shall not store a fumigant within a ~~residential structure~~ residence, office or cab of a vehicle.
- K. An applicator shall ensure that a pesticide in an original or service container, an empty pesticide container that has not been prepared for disposal in accordance with its label, or a returnable or reusable pesticide container is kept in a locked storage space when on an unattended service vehicle or is within view and under the supervision of the applicator responsible for the service vehicle.
- L. An applicator shall ensure that a pesticide in portable application equipment is kept locked when on an unattended service vehicle or is within view and under the supervision of the applicator responsible for the service vehicle.
- M. To prevent damage during transit, an applicator shall ensure that a pesticide container is secured in a locked storage space while the pesticide container is transported on a service vehicle.

~~R4-29-606~~ **R4-29-303. Storing Pesticides and Devices Pesticide and Device Storage Area**

- A. A business licensee or political subdivision shall provide a pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.
- B. A business licensee or political subdivision shall secure the storage area required under subsection (A) from unauthorized entry by equipping its entrance or access with a lock.
- C. Immediately after storing a pesticide, a business licensee or political subdivision shall conspicuously post a sign at the entrance or access to a non-vehicle storage area and on a vehicle storage area indicating there is a pesticide, chemical, or poison stored inside.
- D. A business licensee or political subdivision shall provide sufficient ventilation to the outside of the storage area required under subsection (A) to prevent build-up of odors and preclude chemical injury to an individual or animal.
- E. A business licensee or political subdivision shall provide the following in or immediately adjacent to the storage area required under subsection (A), including a storage area on a service vehicle:
1. Electric or battery-powered lighting that is sufficient to read a pesticide label;
  2. Fully charged and operational fire extinguisher or fire suppression system appropriate to each pesticide stored in the area;
  3. ~~First-aid kit that includes the supplies listed in R4-29-607(6);~~
  4. ~~Emergency medical information including the telephone number of the state or local poison control center;~~
  5. ~~Material capable of absorbing a spill or leak of at least one gallon;~~
  6. ~~Specimen label and MSDS SDS for each pesticide stored in the area; and~~
  7. ~~Washing facilities that include at least one gallon of fresh water, soap, and towels.~~

**R4-29-304. Devices Exempt From Licensure and Registration; Advertising**

- A. The following devices are not subject to the licensure and registration requirements of this Chapter or the OPM's statutes:
1. Physical barriers used to remove or prevent infestation by pests;
  2. Equipment used for the physical removal of pests or the habitat of pests;
  3. Mechanical equipment used for the physical removal of weeds and other vegetation;
  4. Mechanical traps used without a pesticide;
  5. Installation equipment used for home improvement or modifications;
  6. Raptors used to control or relocate other birds; and
  7. Fire arms.
- B. An unlicensed person who engages in the business of pest management, but is exempt from licensure and registration because the person does not apply any pesticides and only uses devices listed in subsection (A) shall prominently display or include the phrase "Not a licensed pest control company" in all written and oral advertisements.

~~R4-29-607~~ **R4-29-305. Equipping a Service Vehicle**

A business licensee or political subdivision shall provide each service vehicle with the following:

**Notices of Exempt Rulemaking**

1. All equipment and supplies required by the label and labeling to apply properly the pesticides on the service vehicle;
2. A measuring and pouring device compatible with the pesticides on the service vehicle;
3. Protective clothing and safety equipment suitable for use when handling, mixing, or applying the pesticides on the service vehicle;
4. Material capable of absorbing a spill or leak of at least one gallon;
5. A storage container large enough to hold material contaminated by absorbing a spill or leak of pesticides;
6. ~~A first aid kit that contains the following:~~
  - a. ~~Antiseptic cleansing wipes, soap and water, or skin sanitizer;~~
  - b. ~~Clean, uncontaminated, non-latex gloves;~~
  - c. ~~Adhesive bandages, gauze, and tape;~~
  - d. ~~Disposable towels;~~
  - e. ~~First aid guide; and~~
  - f. ~~Emergency telephone numbers including the telephone number of the state or local poison control center;~~
7. ~~At least one gallon of clean, drinkable water for each individual using the service vehicle at one time;~~
8. ~~Uncontaminated change of clothing;~~
9. ~~Specimen label and MSDS SDS for each pesticide on the service vehicle; and~~
10. ~~A locking storage space designed to prevent a pesticide container from being damaged while in transit.~~

**~~R4-29-302~~ R4-29-306. Providing Notice to Customers**

- A. ~~An~~ Immediately following an application, the applicator shall provide a written notice to a customer for whom the applicator provides a pest management service that contains the:
1. Identifies the pesticide used;
  2. Provides all information required by the label or labeling;
  3. Provides all information required by local ordinance; and
  1. Name and address of the customer;
  2. Specific site to which a pesticide was applied;
  3. Date of service;
  4. Target pest or category of service;
  5. Trade name of pesticide applied;
  6. EPA registration number of restricted use pesticide applied;
  7. Amount of pesticide applied, in terms of percent active ingredient and volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations;
  8. Name and certification number of the applicator or if the applicator is uncertified, the name of the uncertified applicator and the name and certification number of the applicator providing supervision; and
  4. ~~9. Includes the following~~ Following statement printed in at least an eight-point font: "Warning—Pesticides can be harmful. Keep children and pets away from pesticide applications until dry, dissipated, or aerated. For more information, contact [business licensee's name and business license number issued by the Commission OPM] at [business licensee's telephone number]."
- B. The applicator may provide the notice required by subsection (A) electronically.
- ~~B.C.~~ C. An applicator who provides a pest management service at a school shall comply with the notification requirements in A.R.S. § 32-2307.

**~~R4-29-303~~ R4-29-307. Performing a Wood-destroying Insect Inspection; WDIIRs**

- A. Only an applicator ~~licensed in both categories B-2 and B-8~~ certified in the category of wood-destroying organism management and who has received the training required under A.R.S. § ~~32-2324(A)~~ 32-2333(A) may ~~perform a wood-destroying insect inspection~~ complete a WDIIR.
- B. An applicator ~~performing~~ completing a wood-destroying insect inspection WDIIR shall inspect all areas of a structure that are visible or accessible at the time of the inspection.
- C. An applicator ~~performing~~ completing a wood-destroying insect inspection WDIIR may exclude from inspection an area that is permanently covered by a floor covering, wall covering, or built-in appurtenance such as a bookcase, cabinet, appliance, equipment, or furniture or that would require removing or marring finish work or moving furniture, appliances, or equipment. The applicator shall note on the WDIIR all areas that are not inspected and the reason the areas are not inspected.
- D. An applicator ~~performing~~ completing a wood-destroying insect inspection WDIIR shall inspect all areas where there is evidence of current or previous infestation and where a condition conducive to infestation exists. A condition conducive to infestation includes:
1. Faulty grade level. If a structure contains a slab or floor that is ~~on or near~~ at or below grade, the existing earth level is considered grade level;
  2. Inaccessible sub-area such as an area with less than 18 inches of clear space between the bottom of a floor joist and grade level;



**Notices of Exempt Rulemaking**

3. Excessive cellulose debris. Cellulose debris is excessive when:
    - a. The debris can be raked into a pile of at least one cubic foot,
    - b. A stump or wood imbedded in a footing of the structure is in contact with earth, or
    - c. Firewood or a lumber pile is within six inches of the structure;
  4. Earth-to-wood contact, which involves wood that is part of a structure or that is attached to or securely abuts the structure and is in contact with the ground; or
  5. Excessive moisture or evidence of a moisture condition in or around a ~~structure; or structure.~~
  6. ~~Insufficient ventilation. Ventilation is insufficient when there are fewer than two areas to permit cross ventilation and prevent excessive moisture.~~
- E.** To verify whether a corrective treatment was performed or a condition conducive to infestation was corrected, an applicator may conduct a supplemental inspection within 30 days after an original inspection. An inspection conducted more than 30 days after an original inspection is not a supplemental inspection.
- F.** An applicator completing a WDIIR may exclude from inspection other structures at the site. The applicator shall note on the WDIIR all structures at the site that are not inspected and the reason the structures are not inspected.
- G.** WDIIRs shall be prepared in accordance with R4-29-501(E).

**R4-29-305-R4-29-308. Performing Wood-destroying Insect Control Management**

- A.** An applicator shall not perform wood-destroying insect ~~control management~~ or fumigation unless the applicator is ~~licensed in Category B2 or B4, certified in the category of wood-destroying organism treatment or fumigation, respectively, or working under the immediate supervision of an applicator or qualifying party who is licensed in Category B2 or B4, certified in the category of wood-destroying organism treatment or fumigation respectively.~~
- B.** An applicator shall not perform wood-destroying insect ~~control management~~ until the business licensee or political subdivision that employs the applicator ensures that:
1. A wood-destroying insect inspection is performed under ~~R4-29-303 R4-29-307~~ by a ~~licensed~~ certified applicator qualified meeting the training requirement under A.R.S. § ~~32-2323(E) 32-2332(E),~~
  2. A treatment proposal is prepared on a form approved by the ~~Commission OPM~~ and contains the information required under A.R.S. § ~~32-2323(B) 32-2332(B)~~ and (C), and
  3. The treatment proposal is delivered to the person requesting the proposal or treatment.
- C.** An applicator shall apply a termiticide only in the quantity, strength, ~~and~~ dosage, and ~~in the~~ manner prescribed on the termiticide label unless otherwise specified by this Chapter or ~~a Commission an OPM~~ order.
- D.** Pretreatment for commercial or residential construction.
1. Unless a contract between the business licensee and customer specifies additional requirements, an applicator performing a pretreatment shall:
    - a. Establish a horizontal barrier of termiticide before any concrete slab under roof is poured or in conjunction with establishing the footings and supports for a raised foundation; and
    - b. Establish a vertical barrier of termiticide in all critical areas visible during the time of pretreatment. An area is critical at the time of pretreatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
      - i. A penetration or protrusion through the slab;
      - ii. An observable preset for crack or joint control;
      - iii. A formed-up change of grade level;
      - iv. Abutting slabs;
      - v. A bath trap or tear-out;
      - vi. The interior of a foundation or stem wall; or
      - vii. A pier, pillar, pipe, or other object that extends from the soil to the structure.
  2. Except as specified in subsection (D)(3) and unless the termiticide label requires more, an applicator shall treat all critical areas during a ~~pretreatment, including the final-grade portion of a pretreatment, pretreatment~~ at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth from grade level to the footer. If there is no adjacent footer, the applicator shall treat to a depth of one foot.
  3. Unless the termiticide label requires more, an applicator is not required to treat a critical area during a pretreatment beyond a depth of four feet if:
    - a. Treating beyond a depth of four feet will, or reasonably may, cause an off-site application;
    - b. Access to the footer is not possible because of its distance below grade; or
    - c. Treating beyond a depth of four feet will, or reasonably may cause an environmental contamination.
  4. If an applicator does not treat a critical area during a pretreatment beyond a depth of four feet because the applicator determines that one of the exceptions in subsection (D)(3) is applicable, the applicator shall:
    - a. Apply the amount of termiticide possible without causing an off-site application or environmental contamination, and
    - b. Include evidence of the exception in the treatment record. Evidence of the exception may include:
      - i. A photograph of the interior grade and adjacent location that would or reasonably might be contaminated by

**Notices of Exempt Rulemaking**

- treating beyond a depth of four feet,
  - ii. A photograph of the site after the pretreatment but before concrete placement,
  - iii. A written statement from the general contractor concerning the fill material and compaction rating,
  - iv. A written statement from the concrete subcontractor describing the depth of the footer as greater than four feet, or
  - v. A written compaction rating statement from the engineering subcontractor.
5. If an applicator is advised before concrete is poured that a treated area is disturbed and the continuous horizontal or vertical chemical barrier established under subsection (D)(1) is broken, and if the applicator is provided an opportunity to re-treat the disturbed area, the applicator shall re-treat the disturbed area and re-establish a continuous horizontal and vertical chemical barrier.
  6. Immediately after completing a pretreatment, an applicator shall securely affix a tag to the pretreatment site. The applicator shall ensure that the tag is visible, readily available for inspection, and unlikely to be covered with concrete or soil. If there is a contractor's permit or inspection board at the pretreatment site, the applicator may affix the tag to the board. The applicator shall ensure that the tag contains the following information about the pretreatment:
    - a. Name of business licensee;
    - b. Address of business licensee;
    - c. Telephone number of business licensee;
    - d. License number of business licensee;
    - e. Location or address of project;
    - f. Date of pretreatment application;
    - g. Time that application was started (not time that applicator arrived at the site);
    - h. Time that application ended (not time that applicator left the site);
    - i. Trade name of pesticide used;
    - j. Percentage of active ingredient in the pesticide used;
    - k. Number of gallons of chemical preparation applied;
    - l. Square footage of area treated;
    - m. Linear footage of area treated;
    - n. Type of slab construction;
    - o. Name of applicator; and
    - p. ~~License~~ Certification number of applicator or, if not ~~licensed~~ certified, the name and ~~license~~ certification number of the applicator ~~or qualifying party~~ providing immediate supervision.
  7. If it is necessary for an applicator to abandon a pretreatment site before completing the treatment, the applicator shall complete and affix the tag described in subsection (D)(6), representing the work completed, and after marking the tag "TREATMENT INCOMPLETE."
  8. If a contractor requires a copy of the tag described in subsection (D)(6) for the customer's file, an applicator shall prepare and provide the contractor with a duplicate tag that is clearly marked "DUPLICATE."
  9. ~~An applicator shall leave a record of the final grade treatment in an unlocked electrical or circuit breaker box, if available. Otherwise, the applicator shall conspicuously post or leave the record with the property agent. The applicator shall ensure that the record of the final grade treatment contains the information listed in subsection (D)(6) except the information required under subsections (D)(6)(l) and (D)(6)(n) is not required.~~
- E. New-construction treatment for commercial or residential construction.**
1. Unless specifically precluded by the termiticide label, an applicator performing a new-construction treatment shall treat all critical areas visible at the time of ~~a new-construction~~ the treatment. An area is critical at the time of a new-construction treatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
    - a. A penetration or protrusion through the slab;
    - b. An observable crack or joint;
    - c. Abutting slabs;
    - d. A bath trap or tear-out;
    - e. The interior of a foundation or stem wall; or
    - f. A pier, pillar, pipe, or other object that extends from the soil to the structure.
  2. An applicator shall comply with subsections (D)(2) through (D)(4) when treating a critical area during a new-construction treatment except that the treatment shall be at the labeled rate rather than at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth.
  3. If an applicator is advised that a treated area is disturbed, the applicator shall re-treat the disturbed area.
  4. Immediately after completing a new-construction treatment, an applicator shall securely affix a tag to the new-construction site in the manner described in subsection (D)(6). The applicator shall ensure that the tag contains the information listed in subsection (D)(6).
  5. An applicator shall comply with subsections (D)(7) ~~through (D)(9)~~ and (D)(8) when performing a new-construction

**Notices of Exempt Rulemaking**

treatment.

**F. Final grade treatment for commercial or residential construction.**

1. A business licensee that performs a pretreatment or new-construction treatment shall perform a final grade treatment. The final grade treatment must occur after all grading and other construction-related soil disturbance is complete, but within twelve months of the original pretreatment or new-construction treatment.
2. An applicator shall treat the soil along the exterior of foundation walls at a rate of four gallons of chemical preparation per 10 linear feet (unless precluded by label directions) after all grading and other construction-related soil disturbance is complete, but within twelve months of the original pretreatment or new-construction treatment.
3. An applicator shall leave a record of the final grade treatment in an unlocked electrical or circuit-breaker box, if available. Otherwise, the applicator shall conspicuously post or leave the record with the property agent. The applicator shall ensure that the record of the final grade treatment contains the information listed in subsection (D)(6), except the information required under subsections (D)(6)(l) and (D)(6)(n) is not required.

**F. Post-construction treatment for commercial or residential construction.**

1. If an applicator uses a drilling and injecting application method for a post-construction treatment, the applicator shall space the treatment holes in each treated area no more than 24 inches apart or in accordance with the termiticide label, whichever is more restrictive. If an applicator determines that a structural feature makes it necessary to space treatment holes more than 24 inches apart, the applicator may space the treatment holes more than 24 inches apart if the greater distance is within the limits on the termiticide label.
2. If the critical areas of a structure received neither a pretreatment nor a new-construction treatment, an applicator shall treat all critical areas visible at the time of post-construction treatment before issuing a builder's warranty regarding subterranean termite treatment. An area is critical at the time of a post-construction treatment if it is an area listed in subsection (D)(1)(b), a change of grade, or a crack greater than 1/16th of an inch.
3. After completing a post-construction treatment using a drilling and injection application method, an applicator shall securely patch all treatment holes, including those in an unfinished basement, enclosed porch, garage, or workshop, with a material that is nonporous and non-cellulose.

**G.** An applicator who performs a ~~pretreatment or~~ pretreatment, new-construction treatment or final grade treatment shall ensure that a copy of the information recorded on a tag required under subsection (D) or (E) or the final grade treatment record required under subsection (F) is provided to the business licensee for inclusion in the business licensee's service records.

**H.** A warranty regarding subterranean termite treatment shall only be issued to a builder if the structure received a pretreatment or a new-construction treatment.

**I. Post-construction treatment for commercial or residential construction.**

1. If an applicator uses a drilling and injecting application method for a post-construction treatment, the applicator shall space the treatment holes in each treated area no more than 24 inches apart or in accordance with the termiticide label, whichever is more restrictive. If an applicator determines that a structural feature makes it necessary to space treatment holes more than 24 inches apart, the applicator may space the treatment holes more than 24 inches apart if the greater distance is within the limits on the termiticide label.
2. After completing a post-construction treatment using a drilling and injection application method, an applicator shall securely patch all treatment holes, including those in an unfinished basement, enclosed porch, garage, or workshop, with a material that is nonporous and non-cellulose.

**R4-29-608, R4-29-309, Providing Termite Treatment Warranties and Retreatments**

**A.** If a business licensee or an employee of a business licensee is advised before concrete is poured that a pretreatment area is disturbed and the continuous chemical barrier is broken and if an opportunity is provided to re-treat the disturbed area or is advised that a new-construction treatment area is disturbed, the business licensee shall ensure that the disturbed area is retreated.

**B.** ~~A business licensee that performs a pretreatment or new-construction treatment shall establish vertical barriers at the exterior of foundation walls in stem-wall construction or the exterior of grade beam in monolithic construction after all grading and other construction-related soil disturbance is complete. This final grade treatment, which may be completed after construction, is part of either the pretreatment or new-construction treatment.~~

**C-B.** A business licensee that provides a subterranean termite treatment warranty shall ensure that the effective date of the warranty is the date on which treatment begins.

**D-C.** If subterranean termites occur in or on a residential or commercial structure within ~~five~~ three years after a business licensee first performs a pretreatment or new-construction treatment of the structure, the business licensee shall re-treat ~~the affected area of~~ the structure free of charge in accordance with the label specifications of a termiticide available for use. If subterranean termites occur in or on an addition that does not abut the slab of a residential or commercial structure within ~~five~~ three years after a business licensee first performs a pretreatment or new-construction treatment of the non-abutting addition, the business licensee shall re-treat the non-abutting addition free of charge in accordance with the label specifications of a termiticide available for use. For the purpose of this subsection, the business licensee is the business licensee who performed the pretreatment or new-construction treatment or a successor that acquired the business assets

**Notices of Exempt Rulemaking**

pertaining to ~~category B2 or B8~~ wood-destroying insect treatment.

**~~E.D.~~** If subterranean termites occur a third time on the exterior of a one or two unit residential structure within ~~five~~ three years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall re-treat the entire exterior perimeter of the structure free of charge.

1. As used in this subsection, exterior means a portion of a residential structure where termite activity originates and that is not livable and not a garage;
2. For the purpose of this subsection and subsection ~~(F)~~ (E):
  - a. A first occurrence means the first time evidence of subterranean termites exists after a pretreatment or new-construction treatment;
  - b. A second occurrence means evidence of subterranean termites exists at least 25 feet away from the site of the first occurrence and at least 45 days after the date of re-treatment for the first occurrence; and
  - c. A third occurrence means evidence of subterranean termites exists at least 25 feet away from the sites of both the first and second occurrences and at least 45 days after the date of re-treatment for the second occurrence.

**~~F.E.~~** If subterranean termites occur a third time on the interior of a one or two unit residential structure within ~~five~~ three years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall perform a post-construction treatment of the entire structure free of charge. As used in this subsection, interior means a portion of a residential structure where termite activity originates and that is livable or a garage.

**~~G.F.~~** A business licensee that performs a re-treatment under subsection (C) or (D) ~~or (E)~~ or a post-construction treatment under subsection ~~(F)~~ (E) shall not charge the consumer for any expense incurred in providing the re-treatment or post-construction treatment to which the consumer is entitled under this Chapter.

**~~H.G.~~** If a business licensee goes to a structure to perform a re-treatment under subsection (C) or (D) ~~or (E)~~ or a post-construction treatment under subsection ~~(F)~~ (E) and determines there is no evidence of subterranean termites, the business licensee may charge the consumer a reasonable amount for the expenses incurred in making the trip.

**~~I.H.~~** If a business licensee determines that a re-treatment or post-construction treatment is necessary because the continuous chemical barrier is disturbed, the business licensee may charge the reasonable cost of reestablishing the barrier.

**~~J.I.~~** If a customer refuses a re-treatment or post-construction treatment as described in this Section, access to the customer's property, or to allow drilling in an area where drilling is necessary, the business licensee shall obtain the customer's printed name and dated signature on a document evidencing that the business licensee:

1. Informed the customer of the right to a re-treatment or post-construction treatment at no charge,
2. Provided the customer with a copy of this Section and the termiticide label requirements,
3. Provided the customer with the ~~Commission's~~ OPM's telephone number, and
4. Explained to the customer the benefits of having and the detriments of not having a re-treatment or post-construction treatment.

**~~R4-29-605-R4-29-310.~~ Business Management**

**A.** Financial responsibility.

1. A business licensee shall maintain the financial responsibility required by A.R.S. § 32-2313 and this ~~Chapter~~ Chapter.
2. A business licensee shall ensure that the required financial responsibility covers all pest management activities provided from the primary business office and each branch ~~office; and office.~~
3. If there is an interruption in the financial responsibility of a business licensee, the business licensee shall immediately stop providing pest management services.

**B.** Use of business name and license number.

1. A business licensee shall prominently display the license issued by the ~~Commission~~ OPM at the primary business office and each branch office.
2. A business licensee shall prominently display the business name and license number, as recorded on the license issued by the ~~Commission~~ OPM, on:
  - a. Customer proposals or contracts for pest management services;
  - b. Service records;
  - c. Inspection reports;
  - d. Written materials provided to customers or potential customers;
  - e. Correspondence;
  - f. Advertisements; and
  - g. Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number display on a service vehicle or trailer used in providing pest management services conforms to the following:
    - i. Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the ~~Commission~~ OPM issues the license or issues a business license change ~~under R4-29-214~~ or after the service vehicle or trailer is acquired, whichever is sooner;
    - ii. Is in a color that contrasts with the color of the service vehicle and trailer;

Notices of Exempt Rulemaking

- iii. Is on both sides of the service vehicle and trailer;
  - iv. Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and
  - v. Uses at least two-inch numbers for the license number.
3. A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (B)(2)(g). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (B)(2)(g).
4. When complying with subsection (B)(2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (B)(2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.
- ~~C. Notice to Commission of an incident. A business licensee shall determine whether a qualifying party that qualifies the business licensee complied with R4-29-504(I). If the business licensee determines that the qualifying party has yet to comply with R4-29-504(I), the business licensee shall provide written notice to the Commission within one business day after one of the following incidents is confirmed by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee:~~
- ~~1. Death or illness of an individual or animal;~~
  - ~~2. Contamination of food, feed, drugs, or water supply;~~
  - ~~3. Contamination of a structure that results in the hospitalization of an occupant or evacuation of the structure; or~~
  - ~~4. Contamination of the environment that results in evacuation of the area.~~
- ~~D. A business licensee shall not allow an unlicensed applicator to apply a pesticide for more than 90 days of employment. A business licensee shall not allow a licensed applicator to apply a pesticide in a category for which the applicator is not licensed for more than 30 days.~~

**ARTICLE 4. SUPERVISION**

**R4-29-502-R4-29-401. Supervising an Applicator**

- ~~A. A qualifying party shall ensure that every applicator, whether licensed or unlicensed, is trained and equipped to comply with all of the duties and responsibilities required under the Commission's statutes, this Chapter, and label and labeling directions.~~
- ~~B. A qualifying party shall provide the supervision necessary for an applicator, whether licensed or unlicensed, to comply with all of the duties and responsibilities required under the Commission's statutes, this Chapter, and label and labeling directions.~~
- A. A QP and business licensee shall ensure that an applicator receives the training, equipment, and supervision that the applicator requires to comply fully with the OPM's statutes, this Chapter, and label and labeling directions.
- B. A QP shall be readily available to an applicator while the applicator provides pest management services.
- ~~C. A qualifying party QP shall ensure that the use, application, storage, or disposal of a pesticide is performed or supervised by an individual licensed certified in the a category applicable to the pesticide being used, applied, stored, or disposed.~~
- ~~D. A qualifying party QP shall ensure that immediate supervision, which requires supervision by a licensed certified applicator who is physically present, is provided when an unlicensed uncertified applicator applies a pesticide for wood-destroying insect control, provides a fumigation service, or applies a restricted-use pesticide performs pest management services in the wood-destroying organism management, aquatic, or fumigation category, uses a restricted use pesticide, or uses a pesticide under an experimental use permit. A qualifying party QP shall ensure that a licensed certified applicator provides immediate supervision to only one unlicensed applicator not more than two uncertified applicators at a time.~~
- ~~E. In circumstances other than those described in subsection (D), a qualifying party QP shall ensure that direct supervision, which does not require a supervising licensed certified applicator to be physically present, is provided. A qualifying party QP shall ensure that a licensed certified applicator providing direct supervision considers the potential danger to the public or environment if the unlicensed uncertified applicator misuses a pesticide. A qualifying party QP shall ensure that a licensed certified applicator providing direct supervision instructs the unlicensed uncertified applicator in the following areas and has written evidence that the instruction was provided and understood:~~
- ~~1. Proper loading, mixing, applying, storing, and disposing of the pesticide;~~
  - ~~2. Use of required safety equipment; and~~
  - ~~3. Method and means by which to contact the supervisor immediately.~~
- E. A QP shall ensure that an applicator has the protective clothing, safety supplies, and equipment specified by the label or labeling of each product used by the applicator and by the OPM's statutes and this Chapter. The QP shall ensure that the applicator is instructed regarding how to use, maintain, clean, and store the protective clothing, safety supplies, and equipment.
- G. A QP, business licensee, and political subdivision shall not allow an uncertified applicator to apply a pesticide for more than 90 days after the applicator is registered.

**R4-29-503-R4-29-402. Qualifying a Business License or School District**

**Notices of Exempt Rulemaking**

- A. A business licensee or school district shall employ a QP in each category of pest management in which the business licensee or school district provides pest management services. A business licensee or school district may employ multiple QPs.
- B. A qualifying party QP may not qualify only more than one business licensee or school district at a time.
- C. Notwithstanding subsection (B), the director may allow a QP to qualify more than one school district if the director believes that the number of applicators, pest management needs, and distance of the school districts will not hinder the QP's ability to comply with R4-29-403.
- D. A qualifying party QP may only qualify the one business licensee a business licensee or school district in each category the categories of pest management in which the qualifying party has an active license QP is registered.

**R4-29-504-R4-29-403. Qualifying Party Management**

- A. A qualifying party shall ensure that an applicator employed by the business licensee, whether licensed or unlicensed, receives the supervision and training that the applicator requires to comply fully with the Commission's statutes and this Chapter and label and labeling directions.
- B. A qualifying party who supervises the use, application, storage, or disposal of a pesticide shall hold an applicator license in the category applicable to the pesticide being used, applied, stored, or disposed.
- C. A qualifying party shall not allow an unlicensed applicator to apply a pesticide for more than 90 days of employment. A qualifying party shall not allow a licensed applicator to apply a pesticide in a category for which the applicator is not licensed for more than 30 days.
- D. A qualifying party shall ensure that an applicator employed by the business licensee has the protective clothing, safety supplies, and equipment specified by the label or labeling of each product used by the applicator and by the Commission's statutes and this Chapter. The qualifying party shall ensure that the applicator is instructed regarding how to use, maintain, clean, and store the protective clothing, safety supplies, and equipment.
- E. A qualifying party shall be readily available to an applicator employed by the business licensee while the applicator provides pest management services.
- F.A. To be active in the management of the licensed business that the qualifying party is qualifying, a qualifying party A QP shall be physically present at the primary business office at least once every 30-14 days and at each branch office at least once every 120 days and ensure that all of the following are done:
  1. Determine pesticide use by reviewing records of pesticide acquisitions, storage, disposal, and current inventory;
  2. Review the pesticide inventory, including pesticides stored on a service vehicle, to determine compliance with labels, labeling, and the Commission's OPM's statutes and rules;
  3. Review the training, supervision, and equipping of applicators employed by the business licensee or school district to determine whether the training, supervision, and equipping is sufficient to enable the applicators to comply with labels, labeling, and the Commission's OPM's statutes and rules;
  4. Review personnel records to determine whether an applicator employed by the business licensee or school district is licensed registered and certified in all applicable categories within the time-frames specified by A.R.S. § 32-2312 R4-29-201;
  5. Review office records and recordkeeping procedures to determine compliance with required recordkeeping and reporting; and
  6. Ensure that any deficiency noted when the responsibilities listed in subsections (F)(4) (A)(1) through (F)(5) (A)(5) are performed is corrected.
- G.B. A qualifying party QP shall develop a written plan that specifies how the duties and responsibilities of the qualifying party QP are to be fulfilled if the qualifying party QP is absent or unavailable for any reason. The qualifying party QP shall ensure that the plan is implemented when the qualifying party QP is absent or unavailable.
- H.C. A qualifying party QP shall not delegate the responsibility to be physically present at least every 30-14 days at the primary business office of the licensed business the qualifying party is qualifying and at least every 120 days at branch offices unless the qualifying party QP submits written documentation to the Commission OPM from a licensed medical or mental health care professional that indicates the licensed medical or mental health care professional is treating the qualifying party QP and is of the opinion that the qualifying party QP is unable to fulfill the responsibility to be physically present at least every 30 days as required.
- I. Notice to Commission of an incident. A qualifying party shall determine whether the business licensee qualified by the qualifying party complied with R4-29-605(C). If the qualifying party determines that the business licensee has yet to comply with R4-29-605(C), the qualifying party shall provide written notice to the Commission within one business day after one of the following incidents is confirmed by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee:
  1. Death or illness of an individual or animal;
  2. Contamination of food, feed, drugs, or water supply;
  3. Contamination of a structure that results in the hospitalization of an occupant or evacuation of the structure; or
  4. Contamination of the environment that results in evacuation of the area.
- D. A QP shall:

Notices of Exempt Rulemaking

1. Be active in the management of all pest management related activities of the business licensee or school district.
2. During normal business hours, be readily available to the applicators of the business licensee or school district.
3. Ensure that a business licensee maintains current proof of financial security.

**E.** A temporary QP has the same duties and responsibilities as a regular QP.

**R4-29-404. Branch Supervisors**

With respect to a branch office, the branch supervisor shall fulfill all the duties and responsibilities of a QP in this Article, except as follows:

1. The branch supervisor shall be present at the branch office at a minimum of once every 14 days to review pesticide use, storage and disposal and by ensuring the training, equipping, and supervision of the applicators.
2. The branch office may operate in each category of pest management in which the QP is registered even if the branch supervisor is not a certified applicator in the category, though R4-29-201(C) still applies.
3. The branch supervisor is not responsible for ensuring that the business licensee maintains current proof of financial security.

**R4-29-603-R4-29-405. Supervision of Qualifying Party**

A business licensee or school district shall ensure that a ~~qualifying party~~ QP of the business licensee or school district receives the ~~supervision and training, equipment, and supervision~~ that the ~~qualifying party~~ QP requires to comply fully with the ~~Commission's~~ OPM's statutes and rules and label and labeling directions.

**R4-29-406. Responsible Individuals**

A responsible individual for a political subdivision shall

1. Respond to inquiries or concerns by the Director or the Director's designee regarding compliance with A.R.S. Title 32, Chapter 22.
2. Identify for the Director or the Director's designee where records required by this Chapter are maintained, where personal protection equipment is located, and where pesticides are stored.
3. Demonstrate that all applicators are properly certified.

**R4-29-106-R4-29-407. Joint Responsibility**

- A. An applicator, qualifying party, ~~branch supervisor~~, or business licensee who supervises another ~~person, whether the supervised person is licensed or unlicensed~~, ~~person~~ shall ensure that the supervised person is properly trained and equipped and receives the supervision necessary for the supervised person to provide pest management services ~~competently and safely in accordance with the pesticide label and labeling, this Chapter and the OPM's statutes.~~
- B. ~~Under A.R.S. § 32-2308~~, An applicator, qualifying party, ~~branch supervisor~~, or business licensee who supervises another ~~person, whether the supervised person is licensed or unlicensed~~, ~~person~~ may be held jointly responsible for the acts or omissions of the supervised person.
- C. It is an affirmative defense to joint responsibility as described in subsection (B) if an applicator, qualifying party, ~~branch supervisor~~, or business ~~licensee~~, ~~licensee~~ complied with subsection (A) and can demonstrate that compliance with contemporaneously maintained records.
- D. A QP and business licensee shall comply with every provision in this Chapter regarding applicator duties and responsibilities.

**ARTICLE 5. QUALIFYING PARTY DUTIES AND RESPONSIBILITIES RECORDKEEPING AND REPORTING**

**R4-29-501. Compliance with Applicator Duties and Responsibilities Repealed**

A qualifying party shall comply with every provision in Article 3 regarding applicator duties and responsibilities.

**R4-29-307-R4-29-501. Applicator Recordkeeping**

- A. An applicator shall ~~timely~~ make all records required by law and provide the records to the business licensee or ~~political subdivision~~ that employs the applicator ~~within five business days~~. ~~Under A.R.S. § 32-2321(B)(2), making a false or fraudulent record or report is grounds for disciplinary action.~~
- B. Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:
  1. Name and address of the customer;
  2. Specific site at which a pesticide was applied;
  3. Date of service;
  4. Target pest or purpose of service;
  5. Trade name or ~~common name~~ of pesticide applied;
  6. EPA registration number of any ~~restricted-use~~ pesticide applied;
  7. ~~Percent active ingredient in the pesticide as applied;~~
  8. ~~7.~~ Amount of pesticide applied, in terms of percent active ingredient and volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations; and
  9. ~~8.~~ Name and ~~license~~ certification number of the applicator or if the applicator is ~~unlicensed~~ uncertified, name of the

**Notices of Exempt Rulemaking**

- ~~unlicensed~~ uncertified applicator and the name and ~~license~~ certification number of the applicator providing supervision.
- C. Pesticide purchase records. An applicator shall make a record of each restricted-use pesticide purchased or otherwise acquired. The applicator shall include the following information in the pesticide purchase record:
1. Date of purchase or acquisition;
  2. Trade name ~~or common name~~ of pesticide;
  3. EPA registration number of pesticide;
  4. Quantity of pesticide purchased or acquired; and
  5. Name and license number of the applicator making the pesticide purchase record or name of the business licensee.
- D. Pesticide disposal records. An applicator shall make a record of each ~~restricted-use~~ pesticide disposed, sold, lost, or otherwise relinquished. The applicator shall include the following information in the pesticide disposal record:
1. Date of disposal;
  2. Trade name ~~or common name~~ of pesticide;
  3. EPA registration number of pesticide;
  4. Quantity of pesticide disposed;
  5. ~~Name of the active ingredient in the pesticide disposed;~~
  6. ~~5.~~ Percent active ingredient in the pesticide disposed,
  7. ~~6.~~ Method of disposal,
  8. ~~7.~~ Location and type of disposal site or service; and
  9. ~~8.~~ Name and license number of the applicator making the pesticide disposal record or name of the business licensee.
- E. WDIIR. An applicator who completes a ~~wood-destroying insect inspection~~ WDIIR shall:
1. Complete ~~a WDIIR, the WDIIR~~ using a form approved by the ~~Commission~~ OPM. A trademark or logo may be placed on the WDIIR if it does not alter the format or substance of the ~~Commission-approved~~ OPM-approved form;
  2. Submit an original WDIIR to the ~~business licensee~~ OP or branch supervisor within seven days after completing the wood-destroying insect inspection;
  3. Submit a supplemental WDIIR to the ~~business licensee~~ OP or branch supervisor within seven days after completing a supplemental wood-destroying insect inspection to verify that a corrective treatment was performed or a condition conducive was corrected. The applicator shall include the original inspection number on the supplemental WDIIR;
  4. If required by ~~another state or a~~ federal agency, complete another ~~WDIIR~~ inspection form in addition to but not instead of the ~~Commission-approved~~ OPM-approved WDIIR; and
  5. Ensure that the following information is included on the WDIIR:
    - a. Name, address, telephone number, and license number of business licensee. This information may be pre-printed on the WDIIR;
    - b. Date of wood-destroying insect inspection, and the WDIIR number;
    - c. Purpose of the inspection report;
    - d. Whether the report is from an original or supplemental inspection;
    - e. Name of property owner or seller;
    - f. Address of inspected property;
    - g. Inspected and un-inspected structures at the site and the reason why structures are un-inspected;
    - h. Areas of the structure not inspected because they were obstructed or inaccessible and the cause of the obstruction or inaccessibility;
    - i. Whether visible evidence of wood-destroying insects is observed;
    - j. Whether visible evidence of infestation from wood-destroying insects is observed and if so, the date on which a proper ~~control~~ management measure is performed, if applicable;
    - k. Whether visible damage from wood-destroying insects is observed and if so, the insect causing the damage and the areas in which the damage is observed;
    - l. Whether visible evidence of previous treatment is observed and if so, the nature of the evidence;
    - m. If damage from wood-destroying insects is observed, whether or when the damage will be corrected and whether the damage will be corrected by the business licensee or another company;
    - n. Visible conditions conducive to infestation by wood-destroying insects;
    - o. Diagram or graph of the structure clearly indicating wood-destroying insects, damage, conducive conditions observed, and areas where further inspection is recommended, and a statement or indication on the diagram or graph clearly identifying inaccessible areas; and
    - p. Dated signature and ~~license~~ certification number of the individual making the inspection. The individual making the inspection shall sign the WDIIR by hand or electronically and shall not use a signature stamp or allow another individual to affix the signature.
- F. Wood-destroying ~~insect~~ organism treatment proposal. An applicator who is qualified under A.R.S. § ~~32-2323(B)~~ 32-2332(B) and (E) shall complete a wood-destroying ~~insect~~ organism treatment proposal using a form approved by the ~~Commission~~ OPM and provide a copy of the proposal to the person requesting the proposal or treatment and the ~~business~~



Notices of Exempt Rulemaking

licensee QP.

- ~~G.~~ Upon written request by the Commission, an applicator shall make the records required under this Section available for review by the Commission. The applicator from whom records are requested shall make the records available to the Commission within 24 hours or by a later date specified by the Commission. The applicator shall make the records available at the Commission office by hand delivery, electronic mail, mail, or fax. The applicator shall be available to interpret the submitted records if requested by the Commission.
- ~~H.~~ If an applicator cannot timely comply with a request made under subsection (G), the applicator shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- ~~I.~~ The Commission shall:
  - ~~1.~~ Modify the request made under subsection (G) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or
  - ~~2.~~ Provide additional time to respond to the request made under subsection (G) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.
- ~~J.~~ Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.

**R4-29-505-R4-29-502. Qualifying Party Recordkeeping**

- ~~A.~~ In addition to ensuring that the records required under ~~R4-29-307~~ R4-29-501 are made, a ~~qualifying party~~ QP shall ensure that ~~complete~~ records are made and maintained of the training, supervision, and equipping provided to an applicator. Under A.R.S. § 32-2321(B)(2), making a false or fraudulent record or report is grounds for disciplinary action.
- ~~B.~~ Upon written request by the Commission, a qualifying party shall make the records required under this Section available for review by the Commission. The qualifying party from whom records are requested shall make the records available to the Commission within 24 hours or by a later date specified by the Commission. The qualifying party shall make the records available at the Commission office by hand delivery, electronic mail, mail, or fax. The qualifying party shall be available to interpret the submitted records if requested by the Commission.
- ~~C.~~ If a qualifying party cannot timely comply with a request made under subsection (B), the qualifying party shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- ~~D.~~ The Commission shall:
  - ~~1.~~ Modify the request made under subsection (B) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or
  - ~~2.~~ Provide additional time to respond to the request made under subsection (B) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.
- ~~E.~~ Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.
- ~~B.~~ At a minimum, QP training records must consist of the following information:
  - 1. Date of the training,
  - 2. Printed name and signature of the trainee,
  - 3. Printed name and signature of the trainer,
  - 4. Brief description of topic(s) covered, and
  - 5. Copies of labels and any other pertinent material used in training.
- ~~C.~~ A QP shall maintain the records described in this Section for three years, including after the applicator's employment ending date.

**R4-29-609-R4-29-503. Business Licensee and Political Subdivision Recordkeeping and Retention**

- ~~A.~~ In addition to ensuring that the records required under ~~R4-29-307 and R4-29-505~~ R4-29-501 and R4-29-502 are made and maintained, a business licensee and political subdivision shall make and maintain records of the following:
  - ~~1.~~ The specimen label and ~~MSDS~~ SDS for each registered pesticide currently used by an applicator employed by the business licensee or political subdivision;
  - ~~2.~~ The financial responsibility required under ~~R4-29-605(A);~~ R4-29-310(A), if applicable;
  - ~~3.~~ Purchase records of each pesticide purchased or otherwise acquired that include the following information:
    - ~~a.~~ Date of purchase or acquisition;
    - ~~b.~~ Trade name ~~or common name~~ of pesticide;
    - ~~c.~~ Quantity of pesticide purchased or acquired; and
    - ~~d.~~ Name of the business licensee;
  - ~~4.~~ Date on which a service vehicle or trailer is acquired;
  - ~~5.~~ Incident reports submitted to the ~~Commission~~ OPM as required under ~~R4-29-504(I) or R4-29-605(C)~~ R4-29-504;
  - ~~6.~~ A pest management service provided ~~to a customer,~~ including a service provided under a warranty;
  - ~~7.~~ The evidence of customer refusal of a re-treatment or post-construction treatment required under ~~R4-29-608(J)~~ R4-29-309(J);
  - ~~8.~~ Written inspection reports;

**Notices of Exempt Rulemaking**

9. ~~Customer Business licensee~~ contracts for pest management services; and
10. Personnel records including for each employee of the business ~~licensee~~; licensee or political subdivision:
  - a. Date of hire;
  - b. Date on which pest management services are first performed;
  - e. ~~Copy of license issued by the Commission;~~
  - ~~d.c.~~ Training and continuing education received;
  - e.d. Supervision received;
  - f.e. Protective clothing, safety supplies, and equipment issued to employee;
  - g.f. Name of supervisor; and
  - h.g. Employment ending date.
- B. A business licensee or political subdivision shall maintain the records as follows:
  1. Records under subsection (A)(1), as long as the registered pesticide is used by the business licensee or political subdivision. The business ~~licensee~~ licensee shall maintain the records required under subsection (A)(1) at the primary business office or branch office from which the registered pesticide is used or at which the registered pesticide is stored;
  2. Records under subsection (A)(2), current;
  3. Records under subsection (A)(3) or ~~R4-29-307(C)~~ R4-29-501(C) and (D), three years from the date of purchase or disposal ~~if the pesticide is not used in wood-destroying insect control and five years if the pesticide is used in wood-destroying insect control~~;
  4. Records under subsection (A)(4), as long as the service vehicle or trailer is owned by the business licensee or political subdivision;
  5. Records under subsection (A)(5), until the statute of limitation for possible legal action resulting from the incident is expired or until resulting legal action is completed;
  6. Records under subsection (A)(6) and (A)(7), three years ~~except five years for a pest management service involving wood-destroying insect control or wood-destroying insect or fungi inspection~~;
  7. ~~Records under subsection (A)(7), five years;~~
  - ~~8.7.~~ Records under subsections (A)(8) and (A)(9), three years from the date on the inspection report or customer contract;
  - ~~9.8.~~ Records under subsection (A)(10), three years, including after the employment ending date;
  - ~~10.9.~~ WDIIRs completed under subsection (C), five three years. ~~The business licensee shall consecutively number the WDIIRs and:~~
    - a. ~~Maintain them in consecutive order; or~~
    - b. ~~Maintain them in a different order and maintain a list of the WDIIRs in consecutive order that includes the date of the inspection and the heading under which each WDIIR is filed; and~~
  - ~~11.10.~~ Records under subsections (A)(5) and (A)(6) that pertain to the use of a restricted-use pesticide shall be maintained separate from other records.
- C. When an applicator employed by a business licensee submits a WDIIR, the business licensee shall record the following on the WDIIR:
  1. TARF number,
  2. If the business licensee has the property under warranty:
    - a. Account number,
    - b. Target pest,
    - c. Date of initial treatment,
    - d. Date of warranty expiration, and
  3. The TARF number of each TARF completed regarding the property after the WDIIR is completed.
- D. TARF. A business licensee or political subdivision shall:
  1. Submit to the ~~Commission~~ OPM a TARF, using a form approved by the ~~Commission~~ OPM, within 30 days of completing ~~a termite~~ an action specified under subsection (D)(3). For the purpose of reporting, a pretreatment or new-construction treatment is complete when no further preventative treatment is necessary until the ~~final-grade~~ final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier. In a multiple-unit project, a pretreatment or new-construction is complete when no further preventative treatment is necessary for the last unit at the project until the ~~final-grade~~ final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier;
  2. Include the fee ~~specified under R4-29-105(D)~~ with each TARF and, if applicable, the penalty required under ~~R4-29-105(E)~~ R4-29-103;
  3. Unless exempt under subsection (D)(4), submit a TARF after completing each of the following:
    - a. Pretreatment, including pretreatment of an addition that does not abut the slab of a previously pretreated structure;
    - b. New-construction treatment, including new-construction treatment of an addition that does not abut the slab of a previously new-construction treated structure;
    - c. ~~Final-grade~~ Final grade treatment;

Notices of Exempt Rulemaking

- d. First corrective ~~termite~~ wood-destroying insect treatment at a site; and
  - e. ~~Wood-destroying insect inspection~~ WDIIR.
4. Not submit a TARF after completing the following:
- a. A supplemental WDIIR; or
  - a.b. ~~First~~ The first corrective ~~termite~~ wood-destroying insect treatment at a site if the business licensee:
    - i. Performed a pretreatment or new-construction treatment at the site,
    - ii. Filed a TARF regarding the pretreatment or new-construction treatment, and
    - iii. Performs the first corrective treatment under ~~R4-29-608(D)~~ R4-29-309(D) or under a ~~warranty; or warranty.~~
  - b. ~~Pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure if the business licensee:~~
    - i. ~~Performed the pretreatment or new-construction treatment of the main structure;~~
    - ii. ~~Filed a TARF regarding the pretreatment or new-construction treatment;~~
    - iii. ~~Has the structure under warranty; and~~
    - iv. ~~Treats the abutting addition under the terms of the site warranty.~~
5. Include the information required under A.R.S. § ~~32-2304(A)(13)~~ 32-2331 and the following on a TARF:
- a. License number of the licensed business that performed the work;
  - b. ~~License number~~ Name of the ~~qualifying party~~ QP that ~~qualifies the licensed business in category B2 or B8, as applicable;~~
  - c. For a ~~wood-destroying insect inspection~~ WDIIR, indicate whether:
    - i. There was evidence of infestation, conditions conducive to infestation, or damage present;
    - ii. ~~Treatment~~ Previous treatment was performed for an infestation; and
    - iii. Corrective actions were taken for conditions conducive or damage present;
  - d. For a pretreatment, new-construction treatment, or ~~post-construction preventative~~ final grade treatment to establish an exterior vertical barrier, indicate:
    - i. Chemical used and its EPA registration number,
    - ii. Amount of chemical used,
    - iii. Percentage of active ingredient in the chemical used, and
    - iv. Square and linear footage treated; and
  - e. For a post-construction corrective termite treatment, indicate:
    - i. Type of treatment,
    - ii. Target organism,
    - iii. Chemical used and its EPA registration number,
    - iv. Amount of chemical used, and
    - v. Percentage of active ingredient in the chemical used.
- E.** ~~If the Commission requests a record from a business licensee as a result of the Commission determining there is an emergency endangering the health or safety of an individual, animal, or the environment, the business licensee shall provide the record to the Commission within one hour.~~
- F.** ~~Upon written request by the Commission, a business licensee shall make the records required under this Section available for review by the Commission. The business licensee from whom records are requested shall make the records available to the Commission within 24 hours or by a later date specified by the Commission. The business licensee shall make the records available at the Commission office by hand delivery, electronic mail or fax. The business licensee shall be available to interpret the submitted records if requested by the Commission.~~
- G.** ~~If a business licensee cannot timely comply with a request made under subsection (F), the business licensee shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.~~
- H.** ~~The Commission shall:~~
- 1. ~~Modify the request made under subsection (F) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or-~~
  - 2. ~~Provide additional time to respond to the request made under subsection (F) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.~~
- I.** ~~Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.~~

**R4-29-504. Reporting Incidents and Bulk Releases**

**A. Notice to OPM of an incident.**

- 1. A business licensee and political subdivision shall provide written notice to the OPM within one business day after one of the following incidents is confirmed by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee or political subdivision:
  - a. Death or illness of an individual;
  - b. Contamination of food, feed, drugs, or water supply;
  - c. Contamination of a structure that results in the hospitalization of an occupant or evacuation of the structure; or

Notices of Exempt Rulemaking

- d. Contamination of the environment that results in evacuation of the area.
2. A QP shall determine if the business licensee or school district has complied with subsection (A)(1). If compliance has not occurred, the QP shall provide the written notice required by subsection (A)(1) to the OPM within the time-frame specified in subsection (A)(1).

**B. Notice to OPM of a bulk release.**

1. A business licensee or political subdivision shall notify the OPM at the Pesticide Hotline, 1-800-423-8876, as soon as practical after a bulk release, but no later than three hours after the bulk release. If the bulk release is on a public highway or railway, or results in the death of an individual, the person shall immediately report the release to the Arizona Department of Public Safety Duty Office.
2. A QP shall determine if the business licensee or school district has complied with subsection (B)(1). If compliance has not occurred, the QP shall provide the notices specified in subsection (B)(1) within one business day after the release.

**R4-29-505. Groundwater Protection List Reporting**

**A. For each application of a soil-applied pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list and has been detected in Arizona groundwater within the last five years, the QP or political subdivision applicator shall submit the following information on a quarterly basis on a form approved by the OPM:**

1. The county of use.
2. The name of product used and the EPA registration number.
3. The amount applied.
4. The dates covered by the report, and
5. Business license number.

**B. For the purposes of this Section, "soil-applied pesticide" means a pesticide intended for application to or injection into the soil or for which the label requires or recommends that the application be followed within seventy-two hours by irrigation. Soil-applied pesticides include pesticides applied for final grade treatment, post-construction exterior trench or rod treatment, or pre-emergent weed control, but exclude pesticides applied at or above grade or within the stem wall or footer of a structure.**

**ARTICLE 6. BUSINESS LICENSEE DUTIES AND RESPONSIBILITIES**

**ARTICLE 7. 6. INSPECTIONS; INVESTIGATIONS; COMPLAINTS; DISCIPLINARY PROCEDURES**

**~~R4-29-601. Compliance with Applicator Duties and Responsibilities Repealed~~**

~~A business licensee shall comply with every provision in Article 3 regarding applicator duties and responsibilities. A business licensee shall ensure that an applicator employed by the business licensee, whether licensed or unlicensed, receives the supervision and training that the applicator requires to comply fully with the Commission's statutes and rules and label and labeling directions.~~

**R4-29-601. Inspection of Licensee Records**

**A. Upon written request by the OPM for the production of records, an applicator, QP, branch supervisor, business licensee, or political subdivision shall:**

1. Make the records required under this Chapter available for review by the OPM within 24 hours or by a later date specified by the OPM.
2. Make the records available at the OPM unless another location is agreed upon.
3. Be available to interpret the submitted records if requested by the OPM.

**B. If a person cannot timely comply with a request made under subsection (A), the person shall immediately provide written notice to the OPM, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.**

**C. If the OPM requests a record from a business licensee or political subdivision when there may be an immediate risk to the health or safety of an individual, non-target animal, or the environment, the business licensee or political subdivision shall provide the record to the OPM within one hour.**

**D. An applicator or branch supervisor is only responsible for producing records within the applicator's or branch supervisor's control.**

**~~R4-29-301-R4-29-602. Compliance with Commission OPM Monitoring~~**

**A. For the purpose of monitoring the provision pest management services, the Commission may make If the OPM makes a written request of an applicator for a list of the time and location of pest management services that the applicator is scheduled to provide on a specified date that is at least 24 hours from the time of the request.**

**B. ~~The date, the applicator from whom information is requested under subsection (A) shall make the information available to the Commission within 24 hours after the request is made. The applicator may make the information available at the Commission office by hand delivery or fax or at another location acceptable to the Commission in a manner prescribed by the~~**

Notices of Exempt Rulemaking

OPM.

~~C.B.~~ If an applicator cannot timely comply with a request made under subsection (A), the applicator shall immediately provide written notice to the ~~Commission~~, OPM, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.

~~D.~~ The Commission shall:

1. ~~Modify the request made under subsection (A) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or~~
2. ~~Provide additional time to respond to the request made under subsection (A) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.~~

~~E.~~ Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.

**R4-29-603. Corrective Work Orders**

A. If the OPM issues a corrective work order requiring a licensee to remedy deficiencies in treatment or to comply with this Chapter or the OPM's statutes, the licensee shall notify the OPM in writing by the date specified in the order that the corrective work is complete.

B. The director may consider a licensee's compliance with a corrective work order or lack thereof in imposing appropriate disciplinary action.

C. Failure to timely complete the corrective action or notify the OPM of the completion is a separate ground for disciplinary action.

D. A corrective work order issued by the OPM is not subject to A.R.S. § 41-1009(E)-(F) unless the OPM indicates in the order that timely compliance with the order will result in no disciplinary action being taken for a deficiency or violation.

**~~R4-29-604. Qualifying Party Required~~ Repealed**

~~A business licensee shall employ a qualifying party in each category of pest management in which the business licensee provides services. A business licensee may employ multiple qualifying parties. To qualify a business in a category of pest management, a qualifying party shall have an active qualifying party license in the pest management category. A qualifying party may qualify a business in every pest management category in which the qualifying party is licensed.~~

**~~R4-29-708. R4-29-604. Disciplinary Action~~**

~~A. Following entry of a final order that a licensed or unlicensed individual or entity violated the Commission's statutes or this Chapter, the Commission shall impose discipline as allowed by A.R.S. §§ 32-2304, 32-2321, 32-2327, and 32-2329. In considering the discipline to impose, the Commission shall consider the factors identified in R4-29-704.~~

~~B. The Commission shall place a licensee on probation, as allowed by A.R.S. § 32-2321, if the Commission determines that probation will benefit the licensee or protect the public or environment. The Commission shall define probation requirements that benefit the licensee or protect the public or environment, which may include:~~

1. ~~Reporting by or monitoring of the licensee, or~~
2. ~~Participating in educational activities other than those required by the Commission's statutes or this Chapter.~~

~~C. The Commission shall impose a civil penalty on a licensee, as allowed by A.R.S. § 32-2321, for failure to file or late filing of a TARF if:~~

1. ~~The licensee has a prior violation of the same type; and~~
2. ~~The number of TARFs not filed or filed late equals or exceeds 10 percent of the TARFs that the licensee filed in the previous 12 months.~~

To determine the disciplinary action that is appropriate, the Director may consider the following:

1. Prior violations,
2. Dishonest or self-serving motive,
3. Amount of experience as a licensee,
4. Submission of false evidence or statements or other deceptive practices during the investigative or disciplinary process,
5. Acknowledgement of wrongful nature of violation,
6. Practices put in place to prevent a similar violation from occurring again,
7. Compliance with a corrective work order,
8. Degree of harm resulting from the violation, and
9. Whether harm resulting from the violation was cured.

**~~R4-29-704. R4-29-605. Consent Agreements~~**

~~A. After a settlement conference, the Commission may impose disciplinary action in a consent agreement and order. To determine the disciplinary action that is appropriate, the Commission shall consider the following:~~

1. ~~Prior violation resulting in discipline;~~
2. ~~Dishonest or self-serving motive;~~
3. ~~Amount of experience as a licensee;~~
4. ~~Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the~~

**Notices of Exempt Rulemaking**

Commission;

5. ~~Submission of false evidence, false statement, or other deceptive practice during the investigative or disciplinary process;~~
  6. ~~Refusal to acknowledge wrongful nature of violation;~~
  7. ~~Likelihood that a similar violation will occur again;~~
  8. ~~Degree of harm resulting from the violation; and~~
  9. ~~Whether harm resulting from the violation was cured.~~
- B.** ~~Although the Commission may use evidence of a prior violation resulting in discipline to determine disciplinary action in a current matter, the Commission shall not use evidence of a prior violation as evidence of a violation in a current matter.~~
- C.** ~~The Commission shall ensure that a consent agreement includes the following:~~
1. ~~General nature of complaint;~~
  2. ~~Citation to statutes and rules alleged to be violated;~~
  3. ~~Disciplinary action to be taken against the individual or entity complained about;~~
  4. ~~Effective date of the disciplinary action if different from the date of the consent agreement;~~
  5. ~~Corrective action to be taken by the individual or entity complained about; and~~
  6. ~~Date by which the corrective action is to be complete.~~
- D.** ~~For a consent agreement to be effective, the Commission chairperson or the chairperson's designee and the individual or entity complained about shall sign the consent agreement.~~
- E.** ~~If an individual or entity complained about refuses to sign a consent agreement, the Commission shall:~~
1. ~~Send the matter for formal hearing if the individual or entity is a licensee; or~~
  2. ~~Issue a decision and order if the individual or entity is unlicensed.~~
- F.** ~~By signing a consent agreement under subsection (D), an individual or entity waives the right to a formal hearing, rehearing, or judicial review of the findings of fact, conclusions of law, or order contained in the consent agreement.~~
- A.** A consent agreement shall include the following:
1. General nature of violations.
  2. Citation to statutes and rules alleged to be violated.
  3. Disciplinary action to be taken.
  4. Effective date of the disciplinary action if different from the date of the consent agreement.
  5. Corrective action to be taken, and
  6. Date to complete any corrective action.
- B.** A person entering into a consent agreement with the OPM shall waive the right to a formal hearing, rehearing, or judicial review of the matters contained in the consent agreement.

**R4-29-606. Penalties**

- A.** When assessing a civil penalty for a violation, the Director shall assess a civil penalty for each violation based on the violation's total point value set out in this Section. To calculate the total point value, the Director shall sum the points for each aggravating factor and may subtract the points for each mitigating factor. The Director, in his sole discretion, may treat multiple violations as a single violation for the purpose of calculating the civil penalty.
- B.** Aggravating factors.
1. Pesticide type.
    - a. General use. 2
    - b. Experimental use or special local need. 3
    - c. Restricted use or unregistered. 5
  2. Harm to humans and non-target animals.
    - a. None or unverified potential harm. 0
    - b. Potential harm. 3
    - c. Actual, verifiable harm. 5
  3. Harm to environment and economic loss.
    - a. None or unverified potential harm. 0
    - b. Potential harm or loss. 3
    - c. Actual, verifiable loss of \$10,000 or less. 4
    - d. Actual, verifiable loss exceeding \$10,000. 5
    - e. Actual, verifiable environmental harm. 5
  4. Non-pesticide violations.
    - a. Negligent violations. 4
    - b. Knowing or willful violations. 8
  5. Prior similar violations.
    - a. None. 0
    - b. Warning letter within 12 months. 1
    - c. One or more within 36 months.

**Notices of Exempt Rulemaking**

- but none within 12 months. 2
    - d. One within 12 months. 3
    - e. More than one within 24 months, but none within 12 months. 4
    - f. More than one within 12 months. 5
  - 6. Culpability.
    - a. Negligent violations. 2
    - b. Knowing or willful violations. 4
- C. Mitigating factors. In considering whether to subtract points for mitigating factors, the Director may consider whether the mitigating act occurred before, during, or after OPM's investigation.
  - 1. Good will.
    - a. Admission of fault. 1
    - b. Admission and cooperation. 2
    - c. Admission, cooperation, and corrective action prior to request. 3
  - 2. Environmental benefit.
    - a. Clean up. 1
    - b. Move toward less toxic methods. 2
    - c. Develop IPM program. 3
  - 3. Consumer benefit.
    - a. Consumer education. 1
    - b. Make consumer whole. 2
    - c. Extend warranty. 3
  - 4. Other benefits.
    - a. Training (CEU). 1
    - b. Equipment (modification or new). 2
    - c. Purchase and use of computer for TARFs. 3
- D. Civil penalty. To calculate the civil penalty, the Director shall:
  - 1. For total point values of 6-10, multiply the value by \$100 and then subtract \$500.
  - 2. For total point values of 11-15, multiply the value by \$100 and then subtract \$600.
  - 3. For total point values of more than 16, assess the maximum penalty of \$1000.
- E. Other penalties. In addition to assessing a civil penalty, the Director:
  - 1. For any total point value, may require extra continuing education.
  - 2. For total point values of 6-11, may impose probation requirements.
  - 3. For total point values of 12-17, shall impose probation requirements and may suspend the license, certification, or registration.
  - 4. For total point values of 18 or more, shall suspend or revoke the license, certification, or registration.
  - 5. May take any other action permitted by law, including imposing probation requirements after a suspension ends.

**R4-29-607.    Renumbered**

**R4-29-608.    Renumbered**

**R4-29-609.    Renumbered**

**ARTICLE 7. RENUMBERED**

**R4-29-701.    General Provisions Repealed**

- ~~A. A party to a proceeding involving the Commission may be self-represented or represented by an attorney licensed in Arizona.~~
- ~~B. If a party to a proceeding involving the Commission wishes to be represented by an attorney licensed in a state other than Arizona, the party shall ensure that the attorney is approved in advance to appear pro hac vice by the Arizona Supreme Court.~~
- ~~C. If a party to a proceeding involving the Commission will be represented by an attorney, the party shall ensure that the attorney provides the Commission with written notice of intent to appear.~~
- ~~D. The Commission shall serve a notice of complaint or a notice of hearing on the individual or entity that is the subject of the matter being noticed by personal delivery or first-class, certified mail with a return receipt requested to the address of record with the Commission. The Commission shall serve all other documents by personal delivery or first-class mail.~~
- ~~E. If an attorney submits the notice required under subsection (C), the Commission shall make service of all notices and documents as described in subsection (D) on the attorney.~~
- ~~F. Service by the Commission is complete on the date of personal delivery, the date on a return receipt, or five days after a first-class mail postmark date.~~

Notices of Exempt Rulemaking

- ~~G.~~ To ensure timely receipt of all notices and documents served, a party to a proceeding involving the Commission shall provide written notice to the Commission of a change in address.

**R4-29-702. Inspections, Investigations, and Complaints Repealed**

- ~~A.~~ To monitor compliance with the Commission's statutes and this Chapter and to determine whether pest management services are being provided in safe and effective manner, the Commission may conduct an inspection, with or without notice to a licensee, of:
- ~~1.~~ The licensee's office, including a branch office;
  - ~~2.~~ The licensee's service vehicle or trailer; or
  - ~~3.~~ The licensee while engaged in providing pest management services.
- ~~B.~~ Following an inspection conducted under subsection (A), the Commission shall provide a report to the inspected licensee that notes whether corrective action is required and, if so, the date by which the licensee is to complete the corrective action.
- ~~C.~~ If corrective action is required following an inspection, the licensee shall provide written notice to the Commission, by the date specified in the inspection report, that the corrective action is complete. If the licensee fails to complete the corrective action and provide the written notice required by this subsection, the Commission shall open an inquiry or file a complaint against the licensee.
- ~~D.~~ An individual or entity shall not refuse to attend, testify, or produce evidence sought by the Commission in an investigation or proceeding instituted by or involving the Commission unless the testimony or evidence is privileged under the U.S. or Arizona constitution or otherwise protected by law and the individual or entity asserts the privilege or protection before testifying or producing the evidence. If an individual or entity asserts the privilege against self incrimination, the Commission may, with written approval of the attorney general, issue a written order or apply to an appropriate court for an order compelling the testimony or production of evidence.
- ~~E.~~ Testimony or evidence compelled under subsection (D) is not admissible or usable in any proceeding except one involving a charge of perjury, false swearing, tampering with evidence, or another offense committed in connection with the testimony or production of evidence.
- ~~F.~~ If the Commission provides notice that it has filed a complaint against an individual or entity, the individual or entity shall submit to the Commission a written response that addresses the allegations in the complaint within 20 days of the date of the notice.
- ~~G.~~ The license of a licensee who is provided written notice of a pending investigation or complaint does not expire even if the licensee fails to renew timely. The Commission shall place the license on non-disciplinary suspension until the investigation is complete or the complaint is adjudicated.

**R4-29-703. Settlement Conferences Repealed**

- ~~A.~~ If the Commission determines that it is in the best interest of the state, the Commission shall designate one or more individuals to conduct a settlement conference to negotiate a proposed resolution with an individual or entity against whom the Commission has filed a complaint.
- ~~B.~~ The Commission shall conduct a settlement conference informally. The Commission shall not place a witness under oath at a settlement conference and shall not issue a subpoena for attendance.
- ~~C.~~ The Commission shall not make an audio, video, or stenographic recording of a settlement conference. The Commission may make a general written record of a settlement conference.
- ~~D.~~ A party to a settlement conference shall not disclose to the Commission a settlement offer that does not result in a proposed resolution.
- ~~E.~~ A party to a settlement conference shall not introduce into evidence at a formal hearing a statement made at the settlement conference unless all parties agree to the introduction.
- ~~F.~~ Following a settlement conference, the Commission shall accept, reject, or modify the proposed resolution negotiated by participants in the settlement conference. If the Commission rejects a proposed resolution involving a licensee, the Commission shall dismiss the matter, conduct further investigation, renegotiate a proposed resolution, or send the matter to formal hearing. If the Commission rejects a proposed resolution involving an unlicensed individual or entity, the Commission shall dismiss the matter, conduct further investigation, renegotiate a proposed resolution, send the matter to formal hearing, or impose discipline as allowed by law.

**R4-29-704. Renumbered**

**R4-29-705. Hearing Procedures Repealed**

- ~~A.~~ The Commission shall conduct all hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- ~~B.~~ If the Commission denies a license to an applicant, the applicant may file with the Commission a written request for a hearing within 30 days after service of the notice of denial. The applicant shall state in the request for hearing the applicant's name, address and telephone number, and the reasons why the applicant believes the Commission's decision to deny the applicant's license was incorrect. At a hearing regarding a license denial, the applicant has the burden of proving



Notices of Exempt Rulemaking

that the applicant is qualified to be licensed in accordance with the Commission's statutes and this Chapter, and shall limit the applicant's evidence presented to that which was originally presented to the Commission for its determination on the application.

- ~~C.~~ If the Commission serves a complaint and notice of hearing on a licensee, the licensee may file a written answer with the Commission within 20 days after service of the complaint and notice of hearing. The licensee shall state in the answer the licensee's name, address and telephone number, and a response to the allegations contained in the complaint and notice of hearing. If the licensee does not timely file a written answer, the Commission shall deem the allegations in the complaint admitted by default. The Commission shall serve a notice of default on the licensee stating that the allegations in the complaint shall be deemed admitted 10 days after service of the notice of default. If the licensee does not respond within 10 days after the notice of default is served, the Commission may take disciplinary action without conducting a hearing. If the licensee responds within 10 days after the notice of default is served, the Commission shall continue with the disciplinary process.
- ~~D.~~ A party that wants the Commission to issue a subpoena to compel the appearance of a witness at a hearing or the production of documentary evidence shall submit a written application to the Commission. The party that applies for a subpoena shall serve the subpoena.

**R4-29-706. Review or Rehearing of a Commission Decision Repealed**

- ~~A.~~ The Commission shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- ~~B.~~ Except as provided in subsection (J), a party is required to file a motion for rehearing or review of a decision of the Commission to exhaust the party's administrative remedies.
- ~~C.~~ A party may amend a motion for rehearing or review at any time before the Commission rules on the motion.
- ~~D.~~ The Commission may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
  - 1. Irregularity in the proceedings or an order or abuse of discretion that deprived the moving party of a fair hearing;
  - 2. Misconduct by the Commission, its staff, an administrative law judge, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  - 5. Excessive penalty;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
  - 7. The Commission's decision is the result of passion or prejudice; or
  - 8. The findings of fact or decision is not justified by the evidence or is contrary to law.
- ~~E.~~ The Commission may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). The Commission shall specify the particular grounds for any order modifying a decision or granting a rehearing.
- ~~F.~~ When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- ~~G.~~ Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Commission may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- ~~H.~~ If a rehearing is granted, the Commission shall hold the rehearing within 60 days after the date on the order granting the rehearing.
- ~~I.~~ The Commission may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that an extension of time will:
  - 1. Further administrative convenience, expedition, or economy; or
  - 2. Not cause undue prejudice to any party.
- ~~J.~~ If the Commission makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission shall issue the decision as a final decision without an opportunity for rehearing or review.

**R4-29-707. Judicial Review of Commission Order Repealed**

- ~~A.~~ Except as provided in R4-29-706(J), a Commission order is final on the expiration of time for filing a motion for review or rehearing under R4-29-706 or on denial of a motion for review or rehearing, whichever is later.
- ~~B.~~ A party that has exhausted the party's administrative remedies may appeal a final order of the Commission under A.R.S. Title 12, Chapter 7, Article 6.

**R4-29-708. Renumbered**